

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF LAWRENCE E. SAVELL

23 Volume I, Pages 1 - 377

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P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1           (The following is the deposition of  
2   LAWRENCE E. SAVELL, taken pursuant to Notice of  
3   Taking Deposition, under Rule 30.02(f), at the  
4   offices of Robins, Kaplan, Miller & Ciresi, 2800  
5   LaSalle Plaza, 800 LaSalle Avenue, Minneapolis,  
6   Minnesota, commencing at approximately 8:32 o'clock  
7   a.m., April 14, 1997.

8   APPEARANCES:

9           On Behalf of the Plaintiffs:

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16           On Behalf of The American Tobacco Company:

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1 P R O C E E D I N G S

2 (Plaintiffs' Exhibit 27 was  
3 marked for identification.)  
4 (Witness sworn.)

5 MS. YELENICK: Yes, good morning. I have a  
6 brief statement for the record before we begin, Mr.  
7 O'Fallon. As you know, Larry Savell is an attorney  
8 and is appearing here today under rather unusual  
9 circumstances necessitated by the unique situation in  
10 this case; to-wit, that The American Tobacco Company  
11 as an entity no longer exists. Clearly Mr. Savell's  
12 presence here does not constitute nor can it be  
13 construed in any manner as any kind of a waiver.

14 While I don't anticipate that your questioning  
15 this morning will impermissibly stray into areas  
16 covered by the attorney-client privilege or  
17 work-product protection, to the extent that any  
18 questions do, I will, of course, instruct Mr. Savell  
19 not to answer in accordance with the Minnesota Rules  
20 of Civil Procedure and Judge Fitzpatrick's Case  
21 Management Order in this case as amended on March  
22 20th, 1996.

23 MR. O'FALLON: And just so the record is  
24 clear, I'm going to be deposing Mr. Savell just as I  
25 would any other deponent who appears pursuant to

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1 designation under our Rule 30.02(f). The information  
2 I am seeking is factual information.

3 LAWRENCE E. SAVELL

4 called as a witness, being first duly  
5 sworn, was examined and testified as  
6 follows:

7 ADVERSE EXAMINATION

8 BY MR. O'FALLON:

9 Q. And Mr. Savell, if I could just have your  
10 agreement on this. Do you understand that when I'm  
11 asking you questions, I'm not seeking your legal  
12 opinions as an attorney; rather, I am seeking factual  
13 information from you as a representative as you sit  
14 here today on behalf of The American Tobacco Company?

15 A. I imagine it would depend on the questions you  
16 ask, but I am here on behalf of The American Tobacco  
17 Company.

18 Q. And you're here to give factual testimony; is  
19 that correct?

20 A. I'm here in response to a notice you have  
21 served.

22 Q. That's not answering my question, sir. Would  
23 you answer my question?

24 A. Could you repeat your question?

25 MS. YELENICK: Object to the form,

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1 counsel.

2 MR. O'FALLON: Read the question back.

3 (Record read by the court reporter.)

4 A. That is correct.

5 Q. Would you please formally state your name for  
6 the record.

7 A. My complete name is Lawrence Edward Savell,  
8 L-a-w-r-e-n-c-e, E-d-w-a-r-d, S-a-v-e-l-l.

9 Q. And what is your current position?

10 A. I am counsel at the law firm of Chadbourn &  
11 Parke.

12 Q. And how long have you been counsel at the law  
13 firm of Chadbourne and Park?

14 A. I believe I've been counsel since January 1,  
15 1996.

16 Q. How long have you represented American Tobacco?

17 MS. YELENICK: Objection. Counsel, you may  
18 ask him his tenure at Chadbourne, but the nature of  
19 his association with a client is subject to  
20 attorney-client privilege.

21 MR. O'FALLON: Oh, that is -- that is  
22 simply ridiculous. I am simply asking him how long  
23 he has represented the company. I'm not asking him  
24 for any of his opinions, I'm not asking him for any  
25 of his legal advice, I just want to know factually

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1 how long he himself has represented this entity, and  
2 I'm entitled to that information.

3 MS. YELENICK: You can reframe the question  
4 to get around the objection.

5 MR. O'FALLON: I'm not going to reframe the  
6 question.

7 Q. Are you going to take your attorney's advice?

8 A. Yes.

9 Q. How long have you been associated with American  
10 Tobacco Company?

11 A. What do you mean by "associated?"

12 Q. What do you mean by that term? Do you know what  
13 the --

14 Do you know what the word "associated" means,  
15 Mr. Savell?

16 A. It has a variety of meanings.

17 MS. YELENICK: Object to form, counsel.  
18 There's no reason to be argumentative.

19 MR. O'FALLON: No speaking objections. You  
20 stated your objection; leave it at that.

21 Q. Now, do you understand what the word  
22 "associated" means?

23 A. Not in the context of your question.

24 Q. Okay. You've had, what, seven years of higher  
25 education?

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1 A. I went to law school and graduated, yes.

2 Q. Okay. Well in that period of time have you

3 become associated --

4 Do you understand or have you used the word

5 "associated?"

6 A. I was an associate for many years at

7 Chadbourne. I'm just --

8 I'm not trying to argue with you. I just want

9 to know what you mean by your question.

10 Q. And what did that mean --

11 What did that mean to you, to be an associate at

12 Chadbourne?

13 A. It means I worked there.

14 Q. When did you start as an associate at

15 Chadbourne?

16 A. I began --

17 I was a summer associate in 1981 and I began as

18 an associate in the firm in 1982.

19 Q. When is the first time you heard of The American

20 Tobacco Company?

21 A. It's interesting. It's when I was about four or

22 five years old.

23 Q. When is the first time you heard about The

24 American Tobacco Company in your professional career?

25 A. I don't remember exactly. I suspect it was

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1 after I came to Chadbourne.

2 Q. What time period after you came to Chadbourne?

3 A. I don't remember precisely, but I would imagine  
4 I learned -- or other than my initial knowledge of  
5 the company, it was probably relatively soon after I  
6 came to Chadbourne, in the first two or three years.

7 Q. So in the 1982/1983 timeframe.

8 A. Well I came there in '82. I -- you know, I  
9 don't believe I had any special knowledge for the  
10 first two or three years.

11 Q. That's really not answering my question.

12 A. If you'd just ask the question direct; I'm not  
13 quite sure what you're getting at.

14 Q. Really? Well what I'm trying to get at is how  
15 long have you known about or worked with American  
16 Tobacco Company.

17 A. I've known about The American Tobacco Company,  
18 as I said, since 1965.

19 Q. How long have you worked for The American  
20 Tobacco Company?

21 MS. YELENICK: Objection. Instruct you not  
22 to answer.

23 Q. How long have you worked for The American  
24 Tobacco Company?

25 MS. YELENICK: Same objection.

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1 Q. So you're not going to tell me how long you  
2 worked for The American Tobacco Company.

3 A. I'm following the direction of my attorney.

4 Q. Do you know of American Brands?

5 A. Yes.

6 Q. How?

7 A. I --

8 MS. YELENICK: It's a rather vague  
9 question, counsel.

10 A. I've heard of them. I know they exist.

11 Q. You do. How do you know they exist?

12 A. Well they make a wide variety of products.

13 Q. Yeah. Well how do you know that?

14 A. I don't know how I first became aware of it, but  
15 I've obviously known about it for a long time.

16 Q. Does the law firm of Chadbourne & Parke  
17 represent American Brands?

18 A. Yes.

19 Q. Do you know how long the law firm of Chadbourne  
20 & Parke has represented American Brands?

21 A. I don't know precisely.

22 Q. Can you give me your best estimate?

23 A. I believe they represented them prior to my  
24 coming to the company, to Chadbourne.

25 Q. Do you know how long the law firm of Chadbourne

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1 & Parke has represented American Tobacco?

2 A. I don't know precisely, but again, I believe it  
3 was prior to my coming to the firm.

4 Q. How long prior to your coming to the firm?

5 A. Again, I don't know precisely.

6 Q. Give me your best estimate.

7 A. I would imagine it would be in excess of 10  
8 years before I came to the company. It might be even  
9 a longer period. I don't know precisely how long.

10 Q. Does the law firm of Chadbourne & Parke  
11 represent Gallaher's, Ltd.?

12 MS. YELENICK: Counsel, this is beyond the  
13 scope of this deposition.

14 You may answer.

15 THE WITNESS: Can you repeat the question,  
16 please.

17 (Record read by the court reporter.)

18 A. I believe so.

19 Q. How long have they represented Gallaher's, Ltd.?

20 A. I have absolutely no idea.

21 Q. Have you personally ever represented Gallaher's,  
22 Ltd.?

23 A. No.

24 Q. Have you ever reviewed Gallaher's, Ltd.  
25 documents?

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1 MS. YELENICK: Objection. Instruct not to  
2 answer. Privileged, counsel.

3 MR. O'FALLON: Whether he reviewed a  
4 document from that corporation is not privileged;  
5 that's a factual piece of information.

6 MS. YELENICK: We contend it is encompassed  
7 by the attorney-client privilege.

8 MR. O'FALLON: Well we're going to be back  
9 here, I can tell.

10 BY MR. O'FALLON:

11 Q. I'm going to hand you Exhibit No. 27. Do you  
12 recognize that exhibit?

13 A. Yes, I do.

14 Q. Would you please identify it.

15 A. It is titled "NOTICE OF TAKING DEPOSITION,"  
16 bears the date of March 24, 1997. I believe, if I  
17 can read your handwriting, it's signed by you, and  
18 it's addressed to defendants and their counsel.  
19 Appears to be a 32 -- 30.02(f) notice.

20 Q. And you're familiar with that court rule;  
21 correct?

22 MR. O'FALLON: Let's go off the record for  
23 a second.

24 THE REPORTER: Off the record, please.

25 (Discussion off the record.)

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1 (Record read by the court reporter.)

2 A. I have not read the court rule, but I have an  
3 understanding of what this deposition is about  
4 pursuant to that court rule.

5 Q. And what is your understanding?

6 A. As reflected in this document, you have asked  
7 for the testimony of one or more representatives who  
8 shall be qualified to testify as to matters known or  
9 reasonably available to The American Tobacco Company  
10 concerning the collection and production of documents  
11 produced in the above-captioned litigation.

12 Q. And you were the person that has been designated  
13 to speak on behalf of The American Tobacco Company;  
14 correct?

15 A. That is correct.

16 Q. And what issues are you prepared to talk about  
17 today, what subject matters?

18 A. I am -- I am prepared to talk about the subject  
19 matters identified in the notice you have referred  
20 to.

21 Q. Please tell me everything you did in preparation  
22 for this deposition.

23 A. Well I reviewed the documents identified in the  
24 notice we received from your firm designating certain  
25 documents for this deposition.

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1 Q. Anything else?

2 A. I have to be careful to distinguish what I did  
3 in preparation for this deposition from my normal  
4 work on this case. As you know, I'm actively  
5 involved in this case.

6 Q. And you understand I am not asking you about  
7 your normal work; don't you?

8 A. And I am not answering about my normal work.  
9 I believe it is fair to say that, partly in  
10 preparation for my testimony, I reviewed portions of  
11 some of the other 32 -- 30.02(f) depositions that  
12 have been taken.

13 Q. Which ones are those?

14 A. I believe I looked at the portion of -- of the  
15 Philip Morris and portions of the Brown & Williamson  
16 depositions.

17 Q. You did not look at the transcript for the  
18 Lorillard deposition?

19 A. No.

20 Q. Did you happen to receive a copy of the letter  
21 that I sent to Mr. Getsinger stating that I would be  
22 asking today about the collection and production of  
23 documents both before and after 1994, the date on  
24 which American Tobacco Corporation was sold to B.A.T.  
25 Industries?

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1 A. Is that the letter that lists the documents  
2 designated?

3 Q. Yes, it is.

4 A. Yeah, I -- I did see that document.

5 Q. And are you prepared to testify on the  
6 collection and production of documents by The  
7 American Tobacco Company prior to its merger with  
8 Brown & -- Brown & Williamson?

9 A. I'm prepared to testify as to the matters  
10 identified in your notice of taking deposition.

11 Q. Well with all due respect, that really didn't  
12 answer my question, and so I ask it one more time.  
13 Are you prepared to testify concerning the collection  
14 and production of documents by The American Tobacco  
15 Company prior to December of 1994?

16 MS. YELENICK: Asked and answered, counsel.

17 A. I've told you I'm -- I'm here in response to  
18 your notice of taking deposition. I'm not aware that  
19 you have amended this notice in any way.

20 Q. I'm asking you the question, sir. Can you  
21 please give me an answer?

22 MS. YELENICK: Objection, argumentative,  
23 counsel. You can ask the questions --

24 MR. O'FALLON: I've asked the questions and  
25 I want an answer. I haven't yet received an answer.

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1 Q. Are you prepared to testify concerning the  
2 collection of documents prior to 1994. "Yes" or  
3 "no."

4 A. As I -- as I indicated, I'm here to answer  
5 and -- and respond to your notice of deposition. As  
6 I indicated, I've reviewed materials that you  
7 designated for this deposition, and that's why I'm  
8 here today.

9 Q. Is there something about my question you simply  
10 don't understand?

11 A. You -- are you asking -- the answer is no. I  
12 mean I just --

13 Are you asking me if I am prepared to discuss  
14 matters apart from those listed in your notice of  
15 taking deposition?

16 Q. It's part of what's listed in my deposition.  
17 I'm specifically asking you about a certain part of  
18 that deposition notice and I'm asking you the  
19 question. Now is there something you don't  
20 understand? Am I unclear about my timeframe here?

21 A. What I'm unclear about is to the extent you're  
22 asking me a question regarding matters that are  
23 outside the scope of the deposition notice. If you  
24 are asking me a question regarding a subset of those  
25 matters, then certainly the answer is yes, I am

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1 prepared to testify as to the matters raised in your  
2 notice of taking deposition. If what you're asking  
3 is a subset of that, then the answer is yes, I'm  
4 prepared.

5 Q. Mr. Savell, you and I can play word games all  
6 day long. And if that's what you want to do, I'm  
7 more than happy to be here because I have time. And  
8 eventually we're going to end up at the court on this  
9 matter anyhow. So I'm going to ask you the question  
10 again and see if I can get an answer to my previse  
11 question.

12 Are you prepared as we sit here today to talk  
13 about the collection and production of documents by  
14 American Tobacco prior to December of 1994?

15 MS. YELENICK: Objection to form,  
16 argumentative.

17 A. I am here to talk about the collection and  
18 production of documents produced in the  
19 above-captioned litigation as specified in your  
20 notice.

21 I'm not trying to be argumentative. I don't  
22 want to be here today. I came here to be in your  
23 city, in your law office, to answer your questions.  
24 I'm prepared to do that. I -- my understanding was I  
25 was here in response to your notice, and if you're

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1 telling me something different, well, I have your  
2 notice and I have no amendment to your notice.

3 Q. Are you prepared to talk about issues, including  
4 the collection and production of documents, pursuant  
5 to that subpoena -- or that notice of deposition that  
6 precede 1994?

7 MS. YELENICK: Counsel, objection. Why  
8 don't you ask him questions and see whether he will  
9 respond to those questions.

10 MR. O'FALLON: Counsel, do you understand  
11 what "no speaking objection" means? Are you familiar  
12 with the phrase?

13 MS. YELENICK: We don't seem to be getting  
14 anywhere.

15 MR. O'FALLON: Have you read the court  
16 order? Have you read the court order in this case?

17 MS. YELENICK: Absolutely.

18 MR. O'FALLON: Good. And you understand  
19 there are no speaking objections; correct?

20 MS. YELENICK: To the extent you don't  
21 under -- there's some kind of a misunderstanding  
22 here, --

23 MR. O'FALLON: Are we having a problem  
24 here?

25 MS. YELENICK: -- perhaps some colloquy

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1 needs to --

2 MR. O'FALLON: Do you or don't you  
3 understand that?

4 MS. YELENICK: Understand?

5 MR. O'FALLON: You understand what "no  
6 speaking objections" means?

7 MS. YELENICK: Do you understand what the  
8 objection "argumentative" means?

9 MR. O'FALLON: Yes. And that's all you  
10 need to do is state it, and then it's up to him to  
11 answer.

12 A. I am prepared to answer your questions which  
13 relate to the matters identified in your notice of  
14 deposition. I would suggest, rather than arguing  
15 about whether what you're asking me to respond to  
16 is -- is -- is or is not within the scope of what you  
17 have noticed, why don't you just ask me the  
18 substantive questions and I will give you substantive  
19 answers.

20 I want to get this done. I want to give you the  
21 information that I'm able to give you based on your  
22 notice. And let's just move ahead and do that.

23 Q. You're not going to answer my question.

24 A. I've answered it.

25 Q. Well no. You've answered a lot of questions.

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1 You suggested that you state questions, but you still  
2 haven't answered my question. So that's what I'm  
3 going to ask you to do.

4 Are you prepared to answer questions that --  
5 about American Tobacco's production and collection of  
6 documents prior to 1994? Are you or aren't you?

7 A. To the extent they are subsumed within your  
8 notice in this case, I will answer your questions.

9 Q. Well do you think they're subsumed within the  
10 notice in this case?

11 A. You want a legal opinion?

12 Q. I want you to state your opinion here as a lay  
13 person. You're here as a person who's been  
14 designated by the -- by the corporation.

15 If you all want to the play these legal games,  
16 we can play these legal games all --

17 A. I don't want to play any games at all.

18 THE REPORTER: Okay, gentlemen, one at a  
19 time.

20 THE WITNESS: I apologize.

21 Q. We can be as cute as you want to be here, you  
22 can lawyer this to death, but I'm going to eventually  
23 get the answers to my questions.

24 MS. YELENICK: Then ask the question,  
25 counsel.

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1 MR. O'FALLON: I've asked it numerous  
2 times.

3 Q. Is there something about my question, sir, you  
4 simply don't get?

5 A. Can I just ask for a clarification? Is --  
6 Are you asking me about any subjects that are  
7 extraneous and not subsumed within your notice?

8 Q. Well since you're a lawyer, apparently we're  
9 going to have this whole fight here --

10 A. Why can't you answer that question? Just  
11 tell --

12 Q. -- about whether or not --

13 Well see, Mr. Savell, --

14 MS. YELENICK: Can we go off the record?

15 Q. -- you've been taking depositions a long time,  
16 and guess what, in a deposition I get to ask the  
17 question, you get to answer the question.

18 A. Your question was confusing. I'm asking you to  
19 clarify your question.

20 Q. Okay. What is confusing about my question?

21 A. What is --

22 I would like you to clarify whether you're  
23 asking me about any matters which are not subsumed  
24 within your notice of deposition. It's a very simple  
25 question.

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1 Q. Okay.

2 A. If the answer is they are all subsumed, then my  
3 answer to your question is yes, I'm prepared to  
4 testify to those.

5 Q. My answer is they're subsumed.

6 A. Then I'm prepared to testify. Now let's move  
7 on, please.

8 MR. O'FALLON: Off the record.

9 THE REPORTER: Off the record, please.

10 (Discussion off the record.)

11 BY MR. O'FALLON:

12 Q. Prior to December of 1994, who at American  
13 Tobacco was most responsible for document retention?

14 A. I don't believe I know who at the company was  
15 most responsible for that.

16 Q. Who were the individuals most responsible for  
17 maintaining documents at American Tobacco prior to  
18 December of 1994?

19 A. I don't know.

20 Q. And you made no efforts before coming here today  
21 to find out that information.

22 MS. YELENICK: Objection, argumentative.

23 A. I don't know the answer to that. I -- I don't  
24 know.

25 Q. You don't know -- you don't know the answer to

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1 whether or not --

2 A. I don't know --

3 Q. -- whether you took any steps to find that out?

4 A. I believe I did not take any steps to find out

5 that particular piece of information.

6 Q. Do you know whether there were any specific

7 document retention facilities at American Tobacco

8 prior to December of 1994?

9 A. What do you mean by "document retention

10 facilities?"

11 Q. Places where documents were stored officially,

12 such as cold storage. Do you understand what "cold

13 storage" means?

14 A. Not precisely.

15 Q. Do you understand what "document storage

16 facilities" means?

17 A. I know that there were, among the various

18 facilities, were some warehouses.

19 Q. Okay. And this is, again, prior to December of

20 1994; correct?

21 A. Yes.

22 Q. Where were these warehouses at?

23 A. I know of two --

24 Apart from documents being maintained at -- at

25 other facilities, I know of two specific warehouses,

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1 to use your phrase. There was one warehouse, I  
2 believe, in Richmond, Virginia, and one warehouse in,  
3 I believe, Bronksville, New York.

4 Q. And who owned those warehouses?

5 A. Who owned them?

6 Q. That's right.

7 A. I've never seen the deed. I -- I -- I -- I  
8 can't say for sure. I believe that the Richmond  
9 warehouse was in all probability owned by American  
10 Tobacco Company, although I don't know that for a  
11 fact.

12 The Bronksville warehouse, if I'm not mistaken,  
13 was owned by a warehouse company, and space I believe  
14 was -- was leased. I'm not absolutely sure about  
15 that. That is my best understanding at this point.

16 Q. Who --

17 Which company leased the space at Bronksville?

18 A. I don't know specifically who took out the  
19 lease, if indeed it was a -- a lease situation.

20 Q. Which corporations used that space?

21 A. Bronksville warehouse, my understanding is that  
22 documents from the legal department at American  
23 Brands, which related to The American Tobacco  
24 Company, I believe, were stored there.

25 Q. And was that the only documents stored there?

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- 1 A. I don't know what else was stored in there.
- 2 Q. Again, on behalf of American Brands, American
- 3 Tobacco.
- 4 A. I -- I don't know of any other materials.
- 5 Q. So it's your understanding that at the
- 6 Bronksville facility were predominantly legal
- 7 documents -- or strike that -- documents from the
- 8 legal department at American Brands on behalf of
- 9 American Tobacco Company.
- 10 A. I believe that is correct.
- 11 Q. I just want to go back and -- and finish up
- 12 another subject matter. Other than what you've
- 13 testified to previously, have you done anything else
- 14 in preparation for this deposition?
- 15 A. Again trying to distinguish my -- my ordinary
- 16 work from preparation, I believe I may have flipped
- 17 through the clip pleadings file in this case.
- 18 Q. I'm sorry, what?
- 19 A. The clip pleadings. You know, the pleadings
- 20 from this -- that have been filed in this case.
- 21 Q. Anything else?
- 22 A. I met with Ms. Yelenick.
- 23 Q. Did you meet with anybody else?
- 24 A. I met with John Getsinger, who is here.
- 25 Q. Did you meet with anyone else?

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1 A. And -- and -- and Byron Starns. Byron Starns,  
2 S-t-a-r-n-s.

3 Q. And the three individuals you've just identified  
4 now, Ms. Yelenick, Mr. Getsinger and Mr. Starns, are  
5 all attorneys; correct?

6 A. That's correct.

7 Q. Did you meet with anybody else?

8 A. I met with some attorneys in -- in my office.

9 Q. And when you say "attorneys in my office," you  
10 meant attorneys from your office, or you physically  
11 met with some attorneys in your office?

12 A. Attorneys from Chadbourne & Parke.

13 Q. Who were those attorneys?

14 A. Philip Cohen, C-o-h-e-n, Sarah Efroymson,  
15 E-f-r-o-y-m-s-o-n, and I believe I spoke to Arthur  
16 Fahlbusch, F-a-h-l-b-u-s-c-h.

17 Q. Are all those attorneys attorneys from your  
18 office who have been involved in the collection and  
19 production of documents from The American Tobacco  
20 Company?

21 A. Yes, under my supervision.

22 Q. Anybody else?

23 A. I do not believe so.

24 Q. Did you make any attempt to contact any of the  
25 former employees of American Tobacco Company who may

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1 now be working for Brown & Williamson?

2 A. Not in preparation for my deposition.

3 Q. Did you make any attempt to meet any former  
4 employees of American Tobacco Company who are not  
5 working for Brown & Williamson?

6 A. Not in preparation for my deposition.

7 Q. Did you make any contact with anyone from  
8 American Brands?

9 A. Not in preparation for my deposition.

10 Q. Did you make any contact with anyone from  
11 Gallaher's, Ltd.?

12 A. Not in preparation for my deposition.

13 Q. Did you do anything else in preparation for this  
14 deposition?

15 A. Other than coming out here, I don't believe so.

16 Q. Are you the person primarily responsible for the  
17 collection and production of the documents from The  
18 American Tobacco Company for this litigation, the  
19 Minnesota litigation?

20 A. Yes, I am.

21 Q. In other words, are final decisions as to what  
22 will or will not be collected or what will or will  
23 not be produced, do those rest with you?

24 MS. YELENICK: Objection, that is work  
25 product. Instruct not to answer.

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1 Q. Is there anybody with the American Tobacco  
2 Company who has any responsibility for the collection  
3 and production of documents?

4 A. Are you speaking currently?

5 Q. Currently.

6 A. The American Tobacco Company does not currently  
7 exist.

8 Q. That corporation has been dissolved?

9 A. I don't know about dissolved. My understanding  
10 is that The American Tobacco Company was merged into  
11 Brown & Williamson.

12 Q. Is there any employee of Brown & Williamson who  
13 has primary responsibility for collecting and  
14 producing the documents from The American Tobacco  
15 Company files?

16 A. Well as I indicated, I have primary  
17 responsibility for this production.

18 Q. Is there any employee of Brown & Williamson who  
19 also has some responsibility for the collection and  
20 production of documents in this case for American  
21 Tobacco Company?

22 A. It's my responsibility. I'm not aware of  
23 anybody in particular.

24 Q. Okay. Do you work with any employees at Brown &  
25 Williamson concerning collection and production of

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1 American Tobacco documents?

2 A. I'm not sure what you mean by work with them in  
3 connection with this. We -- we are performing this  
4 production on behalf of The American Tobacco Company  
5 as attorneys for Brown & Williamson.

6 Q. Do you have any employee of Brown & Williamson  
7 who's your primary contact at those companies?

8 A. With regard to what?

9 Q. Well with regard to the scope of this  
10 deposition, sir, the collection and production of  
11 documents.

12 A. There are -- there are various people at the  
13 company whom I deal with on occasion with regard to  
14 these matters.

15 Q. Okay. Who?

16 A. Trying to think with regard --

17 Are you limiting this to my deposition or to the  
18 subject matter of your notice?

19 Q. The subject matter of my notice.

20 A. Okay.

21 Q. Subject matter of my notice is the collection  
22 and production of documents.

23 A. Okay.

24 Q. Now I -- I don't think that's --

25 There is no distinction between your deposition

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1 and the subject matter of this deposition.

2 A. Okay. I just want -- I just want to be precise.

3 Q. You're a corporate designee. I'm entitled to  
4 information from you as though you were the  
5 corporation sitting right here in front of me.

6 A. Okay. Okay. In answer to your question, I have  
7 worked on these matters with Philip Scourfield,  
8 S-c-o-u-r-f-i-e-l-d.

9 Q. And where is he located?

10 A. He's in the legal department.

11 Q. Is he another attorney?

12 A. Yes, he is.

13 Q. He's an in-house attorney for Brown &  
14 Williamson?

15 A. That's my understanding.

16 Q. Did he have any affiliation with American  
17 Tobacco Company prior to the time that Brown &  
18 Williamson acquired American Tobacco?

19 A. Not to my knowledge.

20 Q. Anyone else?

21 MS. YELENICK: Objection to form.

22 A. I'm sorry, can you repeat the question?

23 (Record read by the court reporter.)

24 Q. The question is who you worked with at Brown &  
25 Williamson concerning these production and collection

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- 1 of documents.
- 2 A. At any point.
- 3 Q. Please --
- 4 A. At any point in time.
- 5 Q. Concerning the collection and -- collection and
- 6 production of American Tobacco Company documents,
- 7 yes.
- 8 A. John Kiser, K-i-s-e-r.
- 9 Q. And who is he?
- 10 A. An attorney at Brown & Williamson.
- 11 Q. Anyone else?
- 12 A. Those would be the two people I would
- 13 specifically identify with. I mean I have -- you
- 14 know, in representing Brown & Williamson, I have
- 15 dealings with a number of people. Those are the
- 16 people that I would have the most direct contact with
- 17 with regard to these matters.
- 18 Q. Did you contact either of these individuals
- 19 prior to today's deposition in preparation for
- 20 today's deposition?
- 21 A. No, I did not.
- 22 Q. Have we now discussed everything you have done
- 23 in preparation for this deposition?
- 24 A. I believe so.
- 25 Q. One of the pieces of information I -- I want to

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1 learn during this deposition is the physical location  
2 of documents both before the merger and at the  
3 merger -- after the merger of American Tobacco and  
4 B&W, and I believe to understand that that I need to  
5 have some better understanding than I do currently of  
6 the corporate structure of American Brands and the  
7 history of that corporate structure. And with that,  
8 I would like to mark as the next exhibit the answers  
9 and objections concerning The American Tobacco  
10 Company of Brown & Williamson Tobacco Corporation,  
11 successor by merger of The American Tobacco Company  
12 to plaintiffs' first set of interrogatories.

13 (Plaintiffs Exhibit 28 was marked  
14 for identification.)

15 BY MR. O'FALLON:

16 Q. Do you have Plaintiffs' Exhibit 28 in front of  
17 you, sir?

18 A. Yes, I do.

19 Q. I'd ask you to turn to page 12. Do you see  
20 Interrogatory No. 10 on page 12?

21 A. Yes, I do.

22 Q. What Interrogatory No. 10 asks for is the  
23 corporate history of the corporation, and in the  
24 answer to Interrogatory No. 10 it appears the  
25 attorneys for American have attempted to set out that

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1 history.

2 Is it your understanding that prior to 1969  
3 there was simply one company known as The American  
4 Tobacco Company?

5 A. I don't have any independent knowledge other  
6 than the information contained in the answer to this  
7 interrogatory.

8 Q. Did you take any part in answering this  
9 interrogatory, sir?

10 MS. YELENICK: Objection. That's work  
11 product, counsel.

12 Q. Well in all the time you've worked with the  
13 American Tobacco Company, you haven't come to know  
14 independently its corporate history?

15 A. I don't recall its --

16 I have no reason to believe it is anything  
17 different than what is in this response, this  
18 interrogatory.

19 Q. Is it your understanding that as of July 1st,  
20 1969, The American Tobacco Company became the company  
21 known as American Brands, Inc.?

22 A. My understanding, looking at this document, is  
23 on July 1, 1969, the name of this New Jersey  
24 corporation referred to in the prior sentence was  
25 changed to American Brands, comma, Inc., which

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1 continued to be involved in the manufacture and sale  
2 of tobacco products.

3 Q. And that up until December 31st of 1995, The  
4 American Tobacco Company and the American Brands,  
5 Inc. were one company; correct?

6 A. Again, I have no independent knowledge of the  
7 corporate history. I'm not a corporate attorney. I  
8 believe --

9 My understanding is this statement here is  
10 completely accurate, and I have no knowledge other  
11 than what is laid out here. And, you know, that's  
12 all --

13 Q. In 1969 when the name of American Tobacco  
14 Company was changed to American Brands, was there any  
15 physical transfer of documents from American Tobacco  
16 Company to American Brands?

17 A. I don't know.

18 Q. Have you made any inquiry to find that out  
19 before coming here today?

20 A. No, I have not.

21 Q. In 1985 a reorganization took place and American  
22 Brands, the New Jersey corporation, was merged into a  
23 Delaware corporation known as The American Tobacco  
24 Company; correct?

25 A. That's what this answer says.

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1 Q. Was any transfer of documents done at that time?

2 A. I don't know.

3 Q. Do you know whether or not there was any  
4 separation of documents between American Tobacco and  
5 American Brands up until the time that American  
6 Tobacco was sold to B.A.T. Industries in 1994?

7 THE WITNESS: Could you repeat that  
8 question?

9 (Record read by the court reporter.)

10 A. I'm not sure what you mean by "separation of  
11 documents."

12 Q. Was there a physical distinction made between  
13 the two corporations as far as their documents went?

14 MS. YELENICK: Objection to form.

15 A. I don't know the answer to that question. I  
16 just don't know.

17 Q. Have you done any investigation to try to find  
18 that kind of information out?

19 A. No, I have not.

20 Q. Wouldn't that information be important to you as  
21 someone who's collecting and producing documents on  
22 behalf of The American Tobacco Company?

23 MS. YELENICK: Objection, counsel.

24 A. I don't want to argue with you. I mean we  
25 collected the documents that related to The American

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1 Tobacco Company.

2 Q. Is it or is it not important information from  
3 your point of view?

4 A. Is what important?

5 Q. Whether or not there was a physical separation  
6 of documents between American Brands and American  
7 Tobacco prior to 1994.

8 A. I don't know if it's important or not. I --

9 Q. As the representative of The American Tobacco  
10 Company and as the person most responsible for  
11 collection and production of documents, you don't  
12 know whether it's important or not for American  
13 Tobacco's documents and American Brand's documents to  
14 remain separated or not; correct?

15 MS. YELENICK: Objection, asked and  
16 answered.

17 A. I don't know what you mean by "separated" and  
18 things like that. All I know is in production in  
19 this case we produced the responsive documents that  
20 existed, to the extent they were not privileged.

21 Q. From where?

22 MS. YELENICK: Objection to form.

23 A. From -- from the American Tobacco's facilities  
24 where there were American Tobacco documents.

25 Q. Okay. Well that's what we're going to go

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1 through here in a minute.

2 A. That's fine.

3 Q. I'm just trying to get at the corporate issues.

4 Do you know whether or not American Brands

5 operated as an entity separate from The American

6 Tobacco Company prior to 1994?

7 MS. YELENICK: Counsel, are you seeking a

8 legal conclusion?

9 MR. O'FALLON: I'm seeking facts, ma'am.

10 A. My understanding is that The American Tobacco

11 Company was a subsidiary of American Brands.

12 Q. Okay. And did they operate separately?

13 A. I'm not a corporate attorney.

14 Q. I'm not asking you for a legal opinion. I'm

15 asking you physically did they -- okay. Let's go

16 back for a second.

17 A. Sure.

18 Q. Let's start in 1995.

19 A. Uh-huh.

20 Q. Where were American Tobacco's offices located in

21 1995?

22 A. When in 1995 are you talking about?

23 Q. Or 1985. I'm sorry.

24 A. 1985.

25 Q. 1985. Where were American Tobacco Company's

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1 offices located in 1985?

2 A. I don't know for a fact what offices existed in  
3 1985. I thought we were talking about the production  
4 in this case.

5 Q. You don't know the answer to that question.

6 A. I don't know what facilities existed in 1985.

7 Q. You don't know what facilities existed for  
8 American Brands; correct?

9 A. I -- I don't -- I don't have complete knowledge  
10 of that, no.

11 Q. Well why don't you give me what knowledge you  
12 have.

13 MS. YELENICK: We're getting far afield of  
14 the designated matters here.

15 A. I believe -- and again, I don't know this for a  
16 fact. I don't want to start speculating. I believe  
17 that American Brands possibly in 1985 had offices  
18 in -- in New York. Again, I don't -- I don't know  
19 these for -- for a fact and I don't want to  
20 speculate.

21 Q. Have you ever been in those offices in New  
22 York?

23 MS. YELENICK: Objection to form.

24 A. I believe at one point in time, possibly more  
25 than one point in time, I was in what I believe to be

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- 1 American Brand's offices in New York.
- 2 Q. And where were those offices located?
- 3 A. I believe they were on Park Avenue.
- 4 Q. Do you know the address?
- 5 A. I believe it was, if I'm not mistaken, 245 Park
- 6 Avenue.
- 7 Q. Is that an office building?
- 8 A. I believe so, yes.
- 9 Q. Did American Brands take up that entire office
- 10 building?
- 11 A. I honestly don't know the answer to that
- 12 question.
- 13 Q. Do you know any part of the office building they
- 14 took up?
- 15 A. I remember going to an office. I don't recall
- 16 what floor it was on or any other details other than
- 17 that.
- 18 Q. Was American Tobacco also located in that same
- 19 office building?
- 20 A. That I don't know.
- 21 Q. Are you aware of any other offices that American
- 22 Brands had in 1985?
- 23 A. Again, I don't know what they had and did not
- 24 have in 1985. I've given you the best of my
- 25 recollection as to one particular location. I'm not

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1 a hundred percent sure of that, but that's my best  
2 recollection.

3 Q. Do you know whether they had any offices other  
4 than the New York office prior to 1985?

5 A. For American Brands?

6 Q. American Brands. And let me say, when I say  
7 "offices," I'm referring to offices or facilities.

8 A. For American Brands, I don't recall whether  
9 American Brands had other facilities at that time.  
10 Again, I'm not a corporate lawyer, I'm not very  
11 familiar with the types of matters we discussed and  
12 answered in Interrogatory No. 10, so I'm very careful  
13 about not stating something that I'm just guessing  
14 about.

15 Q. In 1985 was there a separate corporation --  
16 strike that.

17 Prior to 1985 was there a separate corporation  
18 known as The American Tobacco Company in existence?

19 A. Well according to the response to Interrogatory  
20 No. 10, it says that The American Tobacco Company was  
21 incorporated in the state of New Jersey on October  
22 19, 1904. So --

23 Q. So why don't you tell me all the physical  
24 locations of The American Tobacco Company prior to  
25 December 31st, 1985.

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- 1 A. Of The American Tobacco Company?
- 2 Q. Yes.
- 3 A. I don't know at that point in time.
- 4 Q. And you've taken no efforts to find that
- 5 information out; correct?
- 6 A. I frankly don't understand the relevance of
- 7 1985. If you could enlighten me as to why that is --
- 8 Q. I don't think I'm required to go into the
- 9 relevancy, sir.
- 10 A. Okay. I -- I did not prepare for the
- 11 information relevant to 1985 or that time period for
- 12 this deposition.
- 13 Q. Can you tell me physically where documents were
- 14 located at American Tobacco Company in 1985?
- 15 A. Well, I can tell you where they were located
- 16 more recently. I would be speculating as to whether
- 17 any and/or all of those facilities were operating,
- 18 had documents at earlier points in time. I don't
- 19 want to speculate. I -- I don't know what the
- 20 situation was in 1985.
- 21 Q. Can you tell me whether or not there were
- 22 documents in existence in 1985 that are no longer --
- 23 strike that -- that were not transferred or are now
- 24 contained in American Tobacco Company files?
- 25 A. I don't know of any particular document that

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1 would meet that criteria.

2 Q. Do you know whether there were any facilities  
3 that were closed prior to 1985 in which American  
4 Tobacco Company documents from that facility were not  
5 somehow shipped to The American Tobacco Company?

6 A. I have no knowledge of -- of that.

7 Q. Wouldn't that be important information to know  
8 in making sure you've collected all the documents?

9 A. I don't believe so.

10 Q. Why not?

11 A. Are you asking me for a legal conclusion?

12 MS. YELENICK: Argumentative, counsel.

13 Q. I'm asking you facts, sir.

14 A. What's relevant to this production is the  
15 documents as they exist at -- at the time the request  
16 is served. My understanding in any litigation is one  
17 receives a request, one reviews the documents  
18 potentially responsive to those requests, and one  
19 produces the ones that are truly responsive and  
20 retains and logs the ones that are privileged.

21 Q. Sir, is it your understanding that American  
22 Tobacco Company has been in litigation with  
23 individuals alleging that American Tobacco Company  
24 products caused them physical injuries since the  
25 1950s?

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1 A. That is my understanding.

2 Q. And did The American Tobacco Company produce  
3 documents in any of those cases?

4 A. Any case ever brought against it?

5 Q. Prior to 1985.

6 MS. YELENICK: Counsel, this is well beyond  
7 the scope of this deposition, but --

8 A. I honestly don't know whether in cases prior to  
9 1985 document requests had been served. I don't want  
10 to speculate. In some cases there are documents --  
11 just speaking of general litigation generally, in  
12 some cases there are document requests, in other  
13 cases there are not. It is my understanding that  
14 American has always complied with its obligations.

15 Q. Would that include its obligation to retain  
16 documents relevant to smoking and health?

17 A. It is my understanding that the American Tobacco  
18 Company retained documents that it was required to  
19 retain.

20 Q. And would those include documents related to  
21 smoking and health?

22 A. I'm sure it did include documents that would  
23 have related to smoking and health.

24 Q. Is it your understanding that since the 1950s  
25 American has been under an ongoing obligation to

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1 retain documents related to smoking and health due to  
2 the pendency of litigation concerning those issues?

3 MS. YELENICK: Objection to form.

4 A. Are you asking me as an attorney whether --

5 Q. I'm asking you as a person sitting here on  
6 behalf of The American Tobacco Company.

7 A. Uh-huh.

8 Q. Now you understand that employees of the  
9 American Tobacco would know what kind of edicts had  
10 been sent down to them about what they should retain;  
11 correct?

12 A. That's correct.

13 Q. So since you're a representative of The American  
14 Tobacco Company and since I'm asking for the American  
15 Tobacco Company's knowledge, that's the knowledge I  
16 want.

17 A. All right. Could you repeat the question that  
18 was originally asked.

19 (Record read by the court reporter.)

20 MS. YELENICK: Same objection. Calls for a  
21 legal conclusion.

22 A. It is my understanding that American has  
23 retained documents and has complied with any  
24 obligations that existed, whether they may have been  
25 due to litigation or other reasons.

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1 Q. Is it your testimony that American Tobacco has  
2 retained all the documents that have ever been in its  
3 possession concerning smoking and health?

4 A. I don't know how to answer a question like  
5 that. I don't know for a fact. It is my  
6 understanding that American has, but I don't know  
7 every single piece of paper.

8 Q. Have you ever interviewed the individuals who  
9 were around American Tobacco during the time periods  
10 to ask them that question: "Have you retained every  
11 document related to smoking and health?"

12 A. Going back to the 1950s?

13 Q. Yes.

14 A. No, I have not.

15 Q. There are individuals around who have that  
16 information; correct?

17 A. I don't know.

18 Q. Who would you go to ask that question?

19 A. With regard to the 1950s?

20 Q. Sure.

21 A. I don't know. It would be somebody old.

22 Q. Who?

23 A. I -- I -- I don't know. I -- I don't know. I  
24 don't know. I don't know --

25 Q. None of the former --

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1           None of the former employees of American Tobacco  
2 are somebody you think you could get that information  
3 from.

4 A.   Well you're talking about a time period before I  
5 was born. I don't -- I don't know --

6           I don't know who would have been involved in  
7 such matters at that time.

8 Q.   Well wouldn't you imagine that there would be  
9 some corporate history such that that knowledge would  
10 have been passed down to predecessors?

11 A.   I don't want to speculate.

12 Q.   Well I'm not asking you to speculate.

13 A.   You're asking me --

14 Q.   I'm asking you did you ever go out and ask.

15 A.   I have not made inquiry with regard to the  
16 1950s. It is my understanding, as I said before,  
17 that the American Tobacco Company has complied with  
18 all of its obligations to retain materials.

19 Q.   Who gave you that information?

20 A.   That is an understanding I have, and I have no  
21 reason to believe to the contrary.

22 Q.   Where did you --

23           What's the factual basis for that understanding?

24 A.   I can't cite to anything specific other than my  
25 understanding that The American Tobacco Company has

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1 always complied with its obligations.

2 Q. Well, but there has to be some factual basis for  
3 that. Or do you base it on documents you've seen  
4 from The American Tobacco Company?

5 A. I base it -- I base it on the lack of any  
6 knowledge to the contrary.

7 Q. Well, but your lack of knowledge could be due to  
8 the fact you haven't talked to anybody; correct?

9 A. I have not talked to anybody about the 1950s  
10 period you talked about.

11 Q. Okay.

12 A. I am telling you that, to my knowledge, the  
13 company has complied and has continued to comply with  
14 all of its obligations.

15 Q. But you've never specifically asked that  
16 question from American Tobacco employees who may know  
17 one way or the other whether it's true; correct?

18 A. I don't know whether there are any American  
19 Tobacco employees who know whether it's true or not.  
20 There are no American Tobacco employees existing  
21 currently, so the answer to your question is no.

22 Q. The answer to my question is no, you didn't make  
23 the inquiry; correct?

24 A. I have not asked anybody about events in the  
25 1950s.

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1 Q. 1960s, have you asked anybody from American  
2 Tobacco whether or not all smoking and health related  
3 documents were retained from the 1960s?

4 A. I have not asked anybody that question. I have  
5 no reason to believe it's not the case.

6 Q. But again, you've made no effort to actually  
7 talk to an American Tobacco Company employee who was  
8 around in the 1960s and who may have specific  
9 knowledge of that information; correct?

10 MS. YELENICK: Asked and answered.

11 A. There is nothing suggesting anything contrary to  
12 what I've testified to.

13 Q. So the answer to my question is no, I haven't  
14 undertaken to look for that information.

15 A. No.

16 MS. YELENICK: Objection, mischaracterizing  
17 the testimony.

18 Q. Have you ever even tried to make that inquiry,  
19 sir?

20 A. There was no reason to.

21 Q. So your answer is no, I have not; correct?

22 A. I have not asked anyone regarding the 1950s and  
23 1960s periods you have specified.

24 Q. How about the 1970s, have you asked anyone from  
25 The American Tobacco Company whether or not all

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1 documents related to smoking and health were retained  
2 from the 1970s?

3 A. No, I have not.

4 Q. The 1980s, have you asked anyone from the  
5 American Tobacco Company whether all documents  
6 relating to smoking and health were retained in the  
7 1980s?

8 A. No, I have not.

9 Q. Do you know how long that American Tobacco or  
10 American Brands has owned Gallaher's, Ltd.?

11 A. I have no idea.

12 Q. Have you asked anyone from American Tobacco  
13 whether or not American Tobacco Company had access to  
14 research done by Gallaher's in the 1950s relating to  
15 smoking and health?

16 MS. YELENICK: Objection, beyond the scope  
17 of this deposition notice.

18 A. Have I asked anyone?

19 Q. Yes.

20 A. No.

21 Q. Have you asked anyone from American Brands  
22 whether they have in their files smoking and health  
23 related documents from Gallaher's from the 1950s?

24 A. No, I have not.

25 Q. Have you asked anyone from American Tobacco

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1 whether or not they had access to smoking and health  
2 research from Gallaher's in the 1960s?

3 A. No, I have not.

4 Q. Have you asked anyone from American Brands  
5 whether or not American Brands had access to smoking  
6 and health documents from Gallaher's in the 1960s?

7 A. No, I have not.

8 Q. Have you asked anyone from American Brands  
9 whether or not they have retained documents relating  
10 to smoking and health from Gallaher's in the 1960s?

11 A. No, I have not.

12 Q. Okay. So as you sit here today, you can't tell  
13 me whether American Tobacco in fact had access to  
14 research from Gallaher's for the '50s and '60s;  
15 correct?

16 MS. YELENICK: Objection. Way beyond the  
17 scope of this deposition notice, counsel.

18 A. I -- I don't have any knowledge.

19 Q. Okay. You can't tell me whether or not American  
20 Brands had access to smoking and health research from  
21 Gallaher's for the 1950s and '60s; correct?

22 MS. YELENICK: Objection to form.

23 A. I have no idea.

24 Q. Do you know whether Gallaher's research was sent  
25 to Chadbourne & Parke for storage in the 1950s or

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1 1960s?

2 MS. YELENICK: Objection, far beyond the  
3 scope of this deposition.

4 A. I have no -- I have no knowledge of that.

5 Q. Do you know whether documents from Gallaher's  
6 were ever collected for previous litigation involving  
7 American Tobacco in the 1950s and 1960s?

8 A. I have no knowledge.

9 Q. Until the 1970s, did you make any effort --  
10 strike that.

11 Did you make any effort to determine whether The  
12 American Tobacco Company had access to research on  
13 smoking and health from Gallaher's in the 1970s?

14 MS. YELENICK: Objection to form.

15 A. No.

16 Q. Did you make any effort to determine whether or  
17 not American Brands had access to smoking and health  
18 research from Gallaher's in the 1970s?

19 MS. YELENICK: Objection to form.

20 A. No.

21 Are we going to get to the notice of my  
22 deposition and the subject matters I'm here today to  
23 discuss?

24 Q. I'm sorry. Do I have an answer to my last  
25 question?

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1 A. My answer was no.

2 Q. Okay.

3 A. I thought I was here pursuant to your notice and  
4 you've asked virtually no questions that are  
5 regarding the matters you've asked me to come here  
6 for today.

7 Q. Any other comments you'd like to make, Mr.

8 Savell, and get them out of your system and then  
9 we'll go on with questions?

10 A. No. I'm here to give you factual testimony  
11 relating to the matters in your notice. I've come  
12 all the way out here. I'm sitting in your offices.  
13 Let's just ask me the questions that relate to these  
14 matters.

15 Q. Did you make any effort to determine whether or  
16 not American Tobacco had access to Gallaher's smoking  
17 and health research from the 1980s?

18 MS. YELENICK: Objection.

19 A. No.

20 Q. Did you make any effort to determine whether  
21 American Brands had access to Gallaher's smoking and  
22 health research from the 1980s?

23 MS. YELENICK: Objection.

24 A. No.

25 Q. Did you make any effort to determine whether The

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1 American Tobacco Company had access to Gallaher's  
2 smoking and research -- smoking and health research  
3 in the 1990s?

4 MS. YELENICK: Objection.

5 A. No.

6 Q. Did you make any effort to determine whether  
7 Gallaher's -- whether American Tobacco Company had  
8 access to Gallaher's smoking and health research --  
9 strike that.

10 Did you make any effort to determine whether  
11 American Brands had access to Gallaher's smoking and  
12 health research in the 1990s?

13 MS. YELENICK: Objection to form, scope.

14 A. No.

15 Q. Do you know whether or not The American Tobacco  
16 Company, through the American Brands, had  
17 computerized access to American Brands files?

18 A. I don't understand the question.

19 Q. You were present --

20 Were you present at the B&W deposition?

21 A. No, I was not.

22 Q. But you've read some of the B&W transcript;  
23 correct?

24 A. Portions of it, yes.

25 Q. British American Tobacco Company has a

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1 computerized system known as INTERBAT which allows  
2 all of its subsidiaries to have access to its various  
3 research, including its smoking and health research.  
4 Do you know whether or not such a system was in place  
5 at American Brands and American Tobacco?

6 A. I don't know.

7 MS. YELENICK: Objection to form.

8 THE WITNESS: I'm sorry.

9 MS. YELENICK: Beyond the scope.

10 A. I don't know.

11 Q. Did you make any inquiry about that?

12 A. No.

13 Q. Did you ever ask American Tobacco employees  
14 whether or not they had full access to American  
15 Brands files?

16 A. I don't remember asking that question.

17 Q. Did you ever ask American Brands employees  
18 whether they had full access to The American Tobacco  
19 files?

20 A. I don't remember asking that question.

21 Q. Did you ever ask an American Tobacco Company  
22 employee whether they had any access to the  
23 Gallaher's files?

24 A. I don't remember ever asking that question.

25 Q. Did you ever ask American Tobacco --

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1 Did you ever ask an American Brands employee if  
2 they had access to the Gallaher's file?

3 A. I don't remember ever asking that question.

4 Q. Was Gallaher's still a subsidiary of American  
5 Brands at the time American Tobacco was sold to  
6 British American Tobacco Company?

7 MS. YELENICK: Objection.

8 THE WITNESS: Could you repeat the  
9 question, please.

10 (Record read by the court reporter.)

11 MS. YELENICK: Objection to form.

12 A. I'm not totally familiar with the corporate  
13 structure, but I believe that is the case. I believe  
14 that is the case.

15 Q. Is it your understanding that Gallaher's is  
16 still a subsidiary of American Brands as we sit here  
17 today?

18 A. Again, I really am not familiar with the  
19 corporate structure in that regard. I believe that  
20 is the case, but I'm -- I -- I am under oath and  
21 don't know that for an absolute fact.

22 Q. I would now like to ask and inquire into the  
23 area of previous document collections. Were there  
24 ever previous document collections undertaken at  
25 American Tobacco Company prior to 1994?

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1 MS. YELENICK: Objection, beyond the scope  
2 of this notice.

3 You may answer.

4 THE WITNESS: Could you repeat the  
5 question, please.

6 (Record read by the court reporter.)

7 A. To the extent --

8 I believe the answer is yes.

9 Q. Okay. When were those previous collections  
10 undertaken?

11 A. They would have been taken following the receipt  
12 of document requests in cases and the responses to  
13 those requests.

14 Q. Do you know specifically about any such  
15 collections?

16 A. Yes.

17 Q. Why don't you tell me what you know about the  
18 collections generally, and then we'll break it out  
19 and ask specific questions.

20 MS. YELENICK: Objection again, counsel,  
21 far beyond the scope.

22 You may answer.

23 A. It's hard to say anything generally about them.  
24 Each preparation response is to individual discovery  
25 requests. Individual cases will vary.

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1 Q. Why don't you tell me each collection you know  
2 about. And let's start -- let's start from the  
3 earliest to the latest.

4 MS. YELENICK: Counsel, I'm going to object  
5 on the basis of work product and instruct you not to  
6 answer.

7 MR. O'FALLON: Oh, now come on, I am just  
8 asking when the collections took place. I don't need  
9 to know yet what he did. I just want to know when  
10 the collections took place. Is it your --

11 Are you going to sit here and tell me that when  
12 a collection took place is work product?

13 MS. YELENICK: Counsel, your question --

14 Could you read back the question that he made --  
15 the question that he posed?

16 (Record read by the court reporter.)

17 MS. YELENICK: That's your question,  
18 counsel.

19 MR. O'FALLON: That's right. I'm asking  
20 him about each collection.

21 Q. Tell me when each collection took place.

22 MS. YELENICK: Different question.

23 A. I don't know, beyond what I've said before, when  
24 individual collections took place. To the extent  
25 that there were collections, I would imagine they

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1 were following receipt of discovery requests and  
2 responses thereto. I -- I don't have in my mind a  
3 chronology of these -- of the sequences.

4 Q. You understand again that you're sitting here as  
5 part of American Tobacco; correct?

6 A. I am sitting here as -- on behalf of American  
7 Tobacco.

8 Q. Okay. And you're supposed to have the  
9 collective knowledge of American Tobacco in order to  
10 testify here today; correct?

11 A. I am sitting here in response to your notice of  
12 taking deposition to testify as to the matters  
13 specified in your notice, and I'm hoping that  
14 sometime today we'll get to those subjects.

15 Q. And I'm asking about previous collection of  
16 documents. Tell me when at least one previous  
17 collection of documents was undertaken.

18 A. I believe in early 1994 there was a collection  
19 of documents in connection with a pending litigation.

20 Q. What pending litigation?

21 A. I believe it was the Rogers litigation in  
22 Indiana.

23 Q. And what was done in connection with collecting  
24 those documents?

25 MS. YELENICK: Objection. We may be

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1 getting into work product here, counsel. I would  
2 object to the form.

3 MR. O'FALLON: Well that's --

4 Your problem is who you designated. Okay.

5 MS. YELENICK: I would object.

6 MR. O'FALLON: Certainly someone from The  
7 American Tobacco Company knows this information, so  
8 the fact that you've put this gentleman here and he  
9 happens to be an attorney cannot be used to shield my  
10 gathering facts. And I'm just asking for the facts  
11 of that collection. I'm not asking for his legal  
12 opinions at all. I want to know physically what was  
13 done.

14 MS. YELENICK: By whom?

15 MR. O'FALLON: By The American Tobacco  
16 Company.

17 MS. YELENICK: Separate question. Clarify  
18 that and maybe he can answer.

19 MR. O'FALLON: Restate my first question.

20 (Record read by the court reporter.)

21 Q. By The American Tobacco Company.

22 And -- and let me just go back here since  
23 counsel seems to be having a huge problem with this.

24 A. Well I have the same problem.

25 Q. Do you mind? I'm talking.

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1 A. Sorry.

2 Q. When I am asking you questions here, I am not  
3 asking Larry Savell questions. Okay? I am not  
4 asking you as a lawyer about anything you did  
5 necessarily as a lawyer except to the extent that  
6 involves knowledge of facts that the American Tobacco  
7 Company would hold. Do you understand that?

8 A. I understand that.

9 Q. Okay.

10 A. I don't think your questions have been  
11 consistent with that.

12 Q. And do you understand --

13 And do you understand that that's what I'm  
14 seeking?

15 A. I would hope that's what you're seeking.

16 Q. Good. Now would you please answer my question.

17 THE WITNESS: Could you please repeat  
18 whatever question it was that he had asked me?

19 (Record read by the court reporter.)

20 A. Documents --

21 Well "by The American Tobacco Company." I would  
22 say that, to the extent necessary, assistance was  
23 provided by the company to lawyers working on the  
24 production in that matter.

25 Q. What files were searched?

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- 1 A. I don't know.
- 2 Q. What departments were searched?
- 3 A. I don't know.
- 4 Q. What departments were in existence at the time?
- 5 A. I honestly don't know at a given point in time
- 6 what departments were or were not in existence. The
- 7 scope of inquiry would have been tailored by the
- 8 request pending in that case.
- 9 Q. And what was the scope of inquiry?
- 10 A. I don't have the request in front of me. I
- 11 don't remember them precisely.
- 12 Q. What do you --
- 13 What do you recall about the requests?
- 14 A. I recall they were --
- 15 MS. YELENICK: Objection, far beyond the
- 16 scope in this case.
- 17 A. Well I -- I recall they were different than the
- 18 requests in this case.
- 19 Q. What kind of documents did those requests ask
- 20 for?
- 21 A. I believe it requested --
- 22 Again I don't remember precisely. I believe it
- 23 requested documents on some narrow issues as
- 24 reflected in the -- in the request. I --
- 25 Q. What type of documents?

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1 A. Company documents.

2 Q. What type of issues?

3 MS. YELENICK: Objection.

4 A. Whatever issues were raised in that particular  
5 litigation.

6 Q. What issues were raised in that litigation?

7 A. I don't remember. It was --

8 Q. Was it an allegation that smoking caused  
9 disease?

10 A. Yes.

11 Q. So did they ask for smoking and health  
12 documents?

13 A. Again, I don't remember precisely what they  
14 asked for. I believe documents within the scope of  
15 smoking and health documents were requested.

16 Q. Did they ask for research done on smoking and  
17 health?

18 A. I honestly don't remember precisely what they  
19 asked for.

20 Q. So you don't remember what they asked for;  
21 correct?

22 A. Precisely, no. I have not committed the  
23 requests in that case and all responses and any --  
24 any modifying court orders or agreements with the  
25 plaintiffs to my memory. I have not committed that

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1 to memory.

2 My understanding is it was a case, as you've  
3 said, involving a smoking and health type claim.  
4 They requested certain types of documents and certain  
5 types of documents were collected. To go anywhere  
6 beyond that in terms of interpreting requests, which  
7 frankly I don't remember the exact language of,  
8 would, I believe, go into attorney work product.

9 Q. You said they collected certain types of --  
10 They asked for certain types of documents. Do  
11 you remember what those certain types of documents  
12 were?

13 MS. YELENICK: Objection.

14 A. I recall they asked for certain documents  
15 relating to certain aspects of lung cancer, certain  
16 documents relating to certain aspects of alleged  
17 addiction, and certain aspects relating to -- certain  
18 matters relating in some ways to -- to nicotine. To  
19 go anywhere beyond that, one, I don't recall  
20 specifically, and two, would require work-product  
21 information.

22 Q. And you don't know what files at the American  
23 Tobacco Company were searched; correct?

24 A. I don't know specifically what files were  
25 searched. It's my understanding that whatever files

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1 were necessary to be searched to comply with our  
2 obligations in that case were done.

3 Q. Who would know what files were searched?

4 MS. YELENICK: Objection, beyond the scope.

5 A. I -- I honestly don't know the answer to that  
6 question.

7 Q. Who --

8 Who undertook that search?

9 MS. YELENICK: Objection.

10 A. I don't know specifically. My understanding is  
11 the search was undertaken by Chadbourne attorneys  
12 working with company employees.

13 Q. Were the Chadbourne attorneys the only attorneys  
14 involved in that search?

15 A. There may have been in-house attorneys involved.

16 Q. Okay. Do you know which in-house attorneys  
17 would have been involved?

18 A. Not specifically.

19 Q. Who was primarily responsible at Chadbourne for  
20 that document collection?

21 MS. YELENICK: Objection, instruct you not  
22 to answer. This is work product.

23 Q. Are you going to follow your counsel's advice?

24 A. Always.

25 Q. Is it also your opinion that your identity here

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1 today is work product? Didn't have any problem --

2 MS. YELENICK: Objection, argumentative.

3 Q. -- answering my question when I asked you if you  
4 were primarily responsible. Is that also protected  
5 by work product?

6 A. I think we'd make a little more progress if we  
7 didn't get snotty here.

8 Q. I'm trying to get answers to questions, sir, and  
9 I seem to keep hitting road blocks, and so I'm trying  
10 to figure out how I can avoid those road blocks. And  
11 since you have a mission here to go jumping around, I  
12 think I'm going to ask you questions.

13 A. I think that is all totally inappropriate. I am  
14 here to answer questions relating to the subject of  
15 your deposition notice, and when and if we get to  
16 that point, we'll do it.

17 Q. So it's your opinion that --

18 Well what's your opinion about the scope of my  
19 deposition notice?

20 A. My opinion?

21 Q. Sure, as a designee of the American Tobacco  
22 Company.

23 A. My opinion is it's a subject that I'd love to  
24 talk to you about.

25 Q. What do you believe the scope of it is?

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1 A. It's as specified in your notice. I read it  
2 before; I don't want to take up any time to read it  
3 again.

4 Q. And you don't think anything I've asked you has  
5 anything to do with that; do you?

6 A. I think a lot of the questions you've asked are  
7 way beyond the scope of this deposition, and I think  
8 they are inappropriate.

9 Q. How many documents were collected in that  
10 1980 -- '94 collection?

11 MS. YELENICK: Objection.

12 A. I don't know the number of documents that were  
13 collected.

14 Q. Can you approximate?

15 MS. YELENICK: Objection. Counsel, is this  
16 the Rogers litigation you're talking about?

17 MR. O'FALLON: That's what we've been  
18 talking about.

19 MS. YELENICK: Objection, instruct you not  
20 to answer.

21 MR. O'FALLON: You're going to instruct him  
22 not to answer.

23 MS. YELENICK: Yes, I am.

24 Q. What was done with the documents collected from  
25 the American Tobacco Company for the Rogers

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1 litigation?

2 A. The document requests in that case were  
3 reviewed, documents responsive to those requests were  
4 identified, the documents that were responsive and  
5 non-privileged made available to the plaintiffs in  
6 that case who, after American spent a considerable  
7 amount of money preparing and doing that collection,  
8 never came to look at those documents.

9 Q. Okay. Where were those documents physically  
10 collected and -- and placed?

11 MS. YELENICK: Beyond the scope. You may  
12 answer.

13 A. I don't know where they were physically placed.  
14 A copy of the responsive materials, I believe, was  
15 made available to the plaintiffs at local counsel in  
16 Indiana, where they gathered dust.

17 Q. Has the entirety of that document collection  
18 been produced in this litigation, the Minnesota  
19 litigation?

20 A. Documents responsive to the requests in this  
21 case, to the extent they are non-privileged, either  
22 have been or will be produced in this litigation.

23 Q. That's not -- that's not my question. My  
24 question is: Were the documents collected and  
25 produced in the Rogers case produced in this

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1 litigation?

2 A. I don't know how to answer your question any  
3 other way than I've answered it. To the extent there  
4 are differing requests in different cases, you  
5 produced the documents responsive to the requests in  
6 that case.

7 Q. Well --

8 A. I don't believe the plaintiffs would want  
9 documents that are not responsive to their requests  
10 in this case, and the plaintiffs have been very vocal  
11 about that, and we have not given them documents that  
12 are not relevant to the requests in this case.

13 Q. Is that a "yes" or a "no?"

14 A. I -- I answered your question the first time you  
15 asked it. I -- I can't give you an answer different  
16 than that.

17 Q. How would I be able to tell the documents that  
18 were produced in the Rogers case by looking at  
19 documents in the Minnesota depository? Would they  
20 have a separate Bates stamp number on them?

21 MS. YELENICK: Objection. That's work  
22 product.

23 MR. O'FALLON: That's work product?

24 MS. YELENICK: Yes, counsel.

25 Q. How were the documents collected physically from

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1 the American Tobacco Company in the Rogers  
2 litigation?

3 A. My understanding is that attorneys from  
4 Chadbourne & Parke working with people from the  
5 company, given the requests that had been served,  
6 searched those locations where potentially responsive  
7 documents might be found.

8 Q. Okay. Let's take an example. Let's assume they  
9 went into the R&D department. Physically what would  
10 happen at that point? Were documents pulled from the  
11 files?

12 A. I don't know what happened. I wasn't there.

13 Q. Were the documents marked in any way?

14 MS. YELENICK: Counsel, is this Rogers  
15 again?

16 MR. O'FALLON: Ma'am, we've been talking  
17 about Rogers now for some minutes.

18 MS. YELENICK: Okay.

19 A. The documents --

20 You say were the documents physically marked in  
21 any way?

22 Q. Right.

23 A. To my knowledge no document was altered.

24 Q. What I mean by that, is there some way that  
25 subsequent searchers going through it would know that

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1 here is a group of documents that have been  
2 previously looked at and marked?

3 MS. YELENICK: That's work product,  
4 counsel.

5 MR. O'FALLON: Well it's really funny  
6 because, you know, when an employee for Lorillard sat  
7 and told me all of this information recently in a  
8 deposition -- and I assume there were some employees  
9 along --

10 Q. Let me ask that: Did employees assist the  
11 attorneys in going through the files for the Rogers  
12 litigation?

13 A. Again, I don't know this for a fact, I was not  
14 involved in that aspect of -- of that, my  
15 understanding is lawyers from Chadbourne worked with  
16 lawyers of the company, and they may have worked in  
17 that connection with other employees of the company  
18 to locate documents responsive to the requests in the  
19 Rogers case.

20 Q. So if I had an employee of American Tobacco  
21 sitting here, they might be able to tell me whether  
22 or not the documents were somehow marked in those  
23 files for copying so that subsequent employees who  
24 may receive those files would know that in fact, yes,  
25 this group of documents had been marked in some

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1 litigation --

2 MS. YELENICK: Objection to form.

3 Q. -- for collection; correct?

4 A. You're asking me if an employee who was  
5 performing tasks in connection with litigation at the  
6 direction of counsel would have that kind of  
7 information?

8 Q. Absolutely.

9 A. And that strikes me as -- as attorney-client  
10 communications and possibly work product.

11 Q. So now are you instructing yourself not to  
12 answer?

13 MS. YELENICK: Argumentative, counsel.

14 A. Mr. O'Fallon, I am very conscious of the  
15 attorney-client privilege and the work-product  
16 protection. I am not going to violate those matters.

17 Q. So it's your testimony that the fact of  
18 collection is protected.

19 MS. YELENICK: Mischaracterization of the  
20 testimony. Object.

21 A. I can only answer specific questions you are  
22 asking me. To the extent you're asking me questions  
23 which violate the attorney-client privilege or affect  
24 work-product protection, I am ethically obligated not  
25 to answer those questions.

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1 Q. So we'll have to get relief from the court to  
2 get the answers to those questions; correct?

3 A. I think you'd have to overrule the canons of  
4 ethics.

5 Q. Was there any list of the documents collected  
6 made for the Rogers collection?

7 MS. YELENICK: Objection to form.

8 A. Well I believe that might be work product.

9 Q. The fact of whether a list was created.

10 A. By whom?

11 Q. Anybody.

12 A. Sorry. Could you -- could you please rephrase  
13 the question?

14 Q. Certainly.

15 Was a listing of the documents collected in the  
16 Rogers litigation made?

17 MS. YELENICK: Counsel, that's very  
18 ambiguous. Would you specify --

19 MR. O'FALLON: Ma'am, no speaking  
20 objections. Just say "objection."

21 A. The reason I'm pausing is because I'm not really  
22 clear what you mean by "listing."

23 Q. What do you mean by "listing?"

24 A. I don't know. I don't know. I don't know what  
25 you're talking about.

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1 Q. You never used that word, "list?"

2 A. I use -- I use the word all the time.

3 Q. Okay. If you collect four or five documents and  
4 write them down on a piece of paper, the titles of  
5 those documents, what would you call that?

6 A. A list of titles.

7 Q. Okay. Was a list of titles made for the  
8 documents collected in the Rogers litigation?

9 A. Not to my knowledge.

10 Q. Who would be the person I'd ask that question  
11 of?

12 A. You asked that of me. I'm not aware of the  
13 existence of that. Since I'm not aware of the  
14 existence of that, I don't know who I would tell you  
15 to ask.

16 Q. Were you specifically involved in the Rogers  
17 production?

18 A. I was involved to a degree.

19 Q. Who else was involved in the Rogers production?

20 MS. YELENICK: Objection to form.

21 A. I believe other attorneys at Chadbourne & Parke  
22 were involved in that.

23 Q. I kind of figured that. How about some names.

24 MS. YELENICK: Objection, counsel. He's  
25 not going to respond to information about attorneys

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1 in another unrelated litigation.

2 A. Are we ever going to get to this case, or no?

3 Just --

4 This is the case in Minnesota.

5 Q. Look, you know, I'm --

6 A. Let's just get to it.

7 Q. -- I'm well aware I'm not taking the deposition  
8 you'd like me to take.

9 A. I'd like you to take the deposition in the  
10 Minnesota case as opposed to the Indiana case.

11 Q. How about you -- how about you just let go of  
12 the extraneous comments and answer my questions.

13 Would you tell me the attorneys involved?

14 MS. YELENICK: Instruct not to answer.

15 MR. O'FALLON: And again, counsel, you're  
16 making a claim that the identity of attorneys  
17 involved in document collection is, what, work  
18 product, attorney client?

19 MS. YELENICK: My instruction speaks for  
20 itself.

21 MR. O'FALLON: Well I actually don't think  
22 it did. So why don't you just clarify which of those  
23 bases you're using.

24 MS. YELENICK: Work product, counsel.

25 BY MR. O'FALLON:

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1 Q. Do you know whether American Tobacco kept a list  
2 of the documents that were collected in the Rogers  
3 case?

4 A. Not to my knowledge.

5 Q. Did you make any inquiry about that in the  
6 process of collecting documents in this litigation?

7 A. No.

8 Q. You didn't deem that important?

9 A. I have no --

10 MS. YELENICK: Argumentative, counsel.

11 A. I have no evidence that such a list was created  
12 by them.

13 Q. How about an index? Was an index of documents  
14 collected in that litigation made?

15 MS. YELENICK: By whom?

16 MR. O'FALLON: American Tobacco.

17 A. Not to my knowledge.

18 Q. Was an index of documents collected in the  
19 Rogers case made by any outside attorneys?

20 A. That to me would be work product, whether or not  
21 such a list was created.

22 Q. That would be work product. Do you understand  
23 that in this litigation you have been ordered to  
24 produce indices created in litigation?

25 A. I understand that in this case the judge has

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1 made an order requiring the production of certain  
2 indices and databases. I also know that there were  
3 discussions and agreements reached with the plaintiff  
4 in this case regarding that matter, and I also know  
5 that the American Tobacco Company complied in full  
6 with that as well as any other obligation imposed  
7 upon it in this or any other case.

8 Q. When was the 4A index in this case produced?  
9 Strike that.

10 When was the 4A index in this case, that's been  
11 produced in this case, when were those entries first  
12 made?

13 A. Sitting here today, I do not know the timing of  
14 when those entries were made for each of those  
15 indices.

16 Q. How many indices is it your understanding have  
17 been produced?

18 MS. YELENICK: Is this 4A indices now,  
19 counsel?

20 MR. O'FALLON: Yes.

21 A. My recollection, and the best of my  
22 recollection, is that portions as ordered by the  
23 court of, I believe, seven indices were -- were  
24 produced pursuant to the court's order and agreements  
25 with the plaintiff.

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1 Q. Were those separate indices?

2 A. What do you mean by "separate?"

3 Q. Were they created at separate times.

4 A. I honestly don't know the question -- the answer  
5 to that question totally. My understanding is that  
6 many of them were created at different times from  
7 each other.

8 Q. Were they created as a part of an ongoing  
9 collection and production of documents in previous  
10 litigation?

11 MS. YELENICK: Objection to form.

12 A. My only hesitancy to answer, I just want to make  
13 sure I'm not crossing the line into the protected  
14 areas here.

15 Q. Well your line and my line are at very different  
16 places, so --

17 A. Well my --

18 THE WITNESS: Can you repeat the question.

19 (Record read by the court reporter.)

20 A. My understanding is that certain of these  
21 indices or databases were created at approximately  
22 the time of and to varying degrees in connection with  
23 productions in certain matters.

24 Q. And when you say "certain matters," are you  
25 referring to certain litigation?

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1 A. That is my understanding.

2 Q. Okay. What cases was it your understanding  
3 those various indices were produced in connection  
4 with?

5 MS. YELENICK: Objection, instruct not to  
6 answer. Work product.

7 Q. Are you going to follow your attorney's advice?

8 A. As I said before, I always do.

9 Q. And you can't tell me whether or not one of  
10 those indices was created in connection with the  
11 collection of documents in the Rogers case; correct?

12 MS. YELENICK: Objection to form.

13 A. I'm not clear what you mean when you say I can't  
14 tell you. I cannot tell you how the --

15 Q. You don't understand the phrase "I can't tell  
16 you?"

17 A. Well --

18 Q. What's ambiguous about that term?

19 A. I'm not clear you're saying I can't tell you  
20 because of the privileged nature of the questions  
21 your asking me as opposed to my knowledge.

22 Q. Do you have the knowledge?

23 A. With regard to what?

24 Q. Do you know whether or not an indice was created  
25 in connection with the Rogers litigation?

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1 A. I have that knowledge.

2 Q. Was one created?

3 MS. YELENICK: Objection. Instruct you not  
4 to answer.

5 MR. O'FALLON: Better give me your basis.

6 MS. YELENICK: Work product, counsel, as  
7 Judge Fitzpatrick recognized.

8 MR. O'FALLON: We'll see what Judge  
9 Fitzpatrick recognizes when we're done with this.

10 BY MR. O'FALLON:

11 Q. Have you now told me everything you know that  
12 American Tobacco knows about the 1994 production of  
13 documents in the Rogers case?

14 A. I've answered your questions.

15 Q. Have you told me everything that The American  
16 Tobacco Company knows about the 1994 production in  
17 the Rogers case?

18 MS. YELENICK: Objection, vague.

19 A. I really don't know how to answer that  
20 question. I have answered the questions that you  
21 have asked that have not been objectionable on  
22 grounds of privilege. I do not know the extent of  
23 the company's knowledge on a given subject as you're  
24 talking about. I am here to testify to you as to  
25 facts, and -- and I would hope at some point we'd get

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1 to facts regarding this litigation.

2 Q. You're here to talk to me about the collection  
3 and production of documents by the American Tobacco  
4 Company; --

5 A. In this litigation.

6 Q. -- correct?

7 A. I believe that's what this says, in the  
8 above-captioned litigation. And if I'm not  
9 mistaken, --

10 Q. So it's your understanding --

11 A. -- this is the Minnesota case.

12 Q. So it's your understanding that previous  
13 collections don't have any relevance to what you  
14 collected here.

15 A. I don't want to argue.

16 MS. YELENICK: Objection, counsel,  
17 argumentative.

18 Q. Were copies of the documents taken in the Rogers  
19 litigation for collection sent to Chadbourne & Parke?

20 A. I believe that is the case.

21 Q. Do copies of those documents sit in the office  
22 of Chadbourne & Parke as we sit here today?

23 MS. YELENICK: Objection, work product.

24 THE WITNESS: Can I answer?

25 MS. YELENICK: No.

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1 Q. Have all the documents collected in previous  
2 litigation by American Tobacco, were copies of those  
3 documents sent to Chadbourne & Parke?

4 A. I don't know --

5 I don't know for a fact that that is the case.

6 Q. It's true that most --

7 MS. YELENICK: Objection to form.

8 A. Obviously, to respond to discovery requests --  
9 and again I'm very hesitant to go into this because  
10 I'm afraid of crossing the line to work product. But  
11 to respond to a discovery request, the sequence, as I  
12 understand it, is one reads the request, one  
13 determines the type of materials that are called for  
14 by those requests, one locates the materials, and one  
15 then processes them, reviews them for things such as  
16 privilege and things like that, and then either gives  
17 them directly to the plaintiff or makes them  
18 available, depending on the situation. That's my  
19 understanding of what we have done.

20 MR. O'FALLON: Move to strike as  
21 non-responsive.

22 Q. Was a copy made of every document produced in  
23 previous litigation by American Tobacco for  
24 Chadbourne Parke?

25 A. For Chadbourne?

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1 MS. YELENICK: Objection, way beyond the  
2 scope.

3 A. I don't -- I don't know for a fact that a copy  
4 of every document referred to in your question was --  
5 was made for Chadbourne & Parke.

6 Q. Prior to 1994 was there at Chadbourne Parke's  
7 offices or under Chadbourne Parke's control a  
8 collection of documents from The American Tobacco  
9 Company for smoking and health litigation?

10 MS. YELENICK: Objection, vague.

11 A. At various times there were such materials  
12 maintained at Chadbourne. I don't know how -- the  
13 scope of those. Some --

14 Certain of such materials, as you've mentioned,  
15 copies were maintained at Chadbourne.

16 Q. Were all such copies --

17 Have all such copies been retained by Chadbourne  
18 Parke?

19 A. Have what? All such what copies?

20 Q. Have all copies of documents taken from The  
21 American Tobacco Company for purposes of potential  
22 production in smoking and health litigation been  
23 maintained at Chadbourne Parke to the present day?

24 A. I don't know whether that --

25 We're talking about copies of documents. I

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1 don't know whether in fact that is the case.

2 Q. Are there any original documents from The  
3 American Tobacco at Chadbourne & Parke relating to  
4 smoking and health?

5 A. As we sit here today?

6 Q. Yes.

7 A. There may be some in the course of the  
8 production in this case. Again, I don't want to  
9 cross the line into privileged matters, but, you  
10 know, in the course of working on the production in  
11 this case, there may be some that are being reviewed  
12 for production.

13 Q. Were any original documents sent to Chadbourne  
14 Parke as part of a collection and production of  
15 documents in previous litigations?

16 A. Were any originals?

17 Q. Yes.

18 A. It is my understanding that at various times  
19 some original documents of American Tobacco Company  
20 would have been physically on the premises of  
21 Chadbourne & Parke.

22 Q. Were those originals always returned?

23 A. They were either returned or they were  
24 maintained at Chadbourne as a custodian of those  
25 documents.

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1 Q. Okay. Does Chadbourne, as we sit here today,  
2 maintain any such documents as a custodian of  
3 documents?

4 A. I believe I testified in answer to one of your  
5 recent questions that in connection with the  
6 production in this case, I believe as we sit here  
7 today that some original documents of The American  
8 Tobacco Company are at Chadbourne's offices in  
9 connection with their review for potential production  
10 in this case.

11 Q. How many such documents would that be?

12 A. I don't have a -- a knowledge of the volume as  
13 we sit here today.

14 Q. Do you have an approximation of the volume?

15 A. I would just be guessing. I don't know. It's  
16 varied at different times.

17 Q. How about as we sit here today?

18 A. I honestly don't know. I don't want to  
19 speculate.

20 Q. Who would know?

21 A. I don't know who in particular would -- would  
22 know. As I indicated, it varied at different times.

23 Q. You're primarily responsible for this document  
24 production. If you don't know how many original  
25 documents that you have at Chadbourne & Parke, who

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1 would know today as we sit here today?

2 A. I don't know anybody who has better knowledge  
3 than I do sitting here today. What I'm telling you  
4 is that the documents -- various documents have been  
5 at Chadbourne & Parke's location in connection with  
6 the production in this case. You can't -- you can't  
7 review them if you're not reading them.

8 Q. So you actually --

9 Let me just understand how Chadbourne did a  
10 document review and collection. They actually would  
11 go in and physically remove documents from American  
12 Tobacco and to be sent to their offices?

13 A. Which production are you referring to?

14 Q. Any of the productions.

15 A. I'm not -- it's not clear to me that the  
16 production -- the process was always the same. If --  
17 if we ever get to the production in this case, I'd be  
18 happy to tell you about that.

19 Q. We've had testimony in other cases that, for  
20 instance with Lorillard, a copy was made of their  
21 documents every time they were collected and the copy  
22 of those documents was set -- sent to Shook, Hardy &  
23 Bacon to be maintained at an archive. Was a similar  
24 process undertaken by Chadbourne Parke?

25 MS. YELENICK: Which case, counsel?

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1 MR. O'FALLON: All cases.

2 A. In all --

3 Again, as I said before, I'm not sure the  
4 process was always the same. My understanding is  
5 that generally the process is that a copy is made.

6 Q. Okay. So it's your understanding that to the  
7 best of your knowledge, every time documents were  
8 collected in previous litigation, that a copy of  
9 those documents was made and sent to Chadbourne  
10 Parke; correct?

11 A. I don't know if that was always the situation.  
12 I believe that, generally, in matters that I am  
13 familiar with, that is how it is generally done.

14 Q. And does Chadbourne have a policy as to how long  
15 they retain those copies of documents?

16 A. These are copies of documents, the originals of  
17 which are in the company's possession.

18 Q. Correct.

19 A. I am not aware of any policy with -- regarding  
20 the maintenance of -- of duplicate copies of these  
21 materials.

22 Q. Does Chadbourne Parke maintain an archive of  
23 American Tobacco Company documents?

24 A. I don't know what you mean about by "archive."

25 Q. What do you mean by "archive?"

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1 MS. YELENICK: Objection, counsel.

2 A. I don't know what you mean.

3 Q. You don't understand the word "archive."

4 A. Not in this context, no.

5 Q. Okay. Well in what context do you understand it

6 in?

7 A. I -- I -- I can't answer a question that I don't

8 understand. I mean if you could rephrase it, perhaps

9 I could answer it for you.

10 Q. What does "archive" mean to you?

11 A. It means a variety of things. In this --

12 Q. Well why don't you give me -- why don't you give

13 one of the definitions you understand and we'll see

14 if it's close to what I understand, and we'll go

15 forward.

16 A. Well on a web site you have sometimes -- if it's

17 a magazine, you might have prior issues archived on

18 the web site. I don't --

19 Q. Which would mean it would be a collection of

20 those; correct? It would be a collection of past

21 issues; right?

22 A. It might be, yes.

23 Q. Okay. Is there a collection of documents

24 collected from The American Tobacco Company

25 maintained at Chadbourne & Parke?

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1 A. It's my understanding that duplicate copies of  
2 company documents relating to certain prior  
3 productions -- and I have no idea if they're complete  
4 or not -- may be maintained at Chadbourne. Other  
5 than that, I would be speculating which --

6 Q. "May be maintained." You mean you don't know  
7 for a fact?

8 A. I believe there are at Chadbourne copies of  
9 certain company documents, the originals of which  
10 were from The American Tobacco Company files in  
11 connection with some productions.

12 Q. And how large is that collection?

13 A. I -- I really don't know.

14 Q. Where is it maintained?

15 A. At Chadbourne & Parke.

16 Q. How big a room is it maintained in?

17 A. I don't know if it's just in one room. I mean  
18 it's --

19 I don't know. I don't -- I don't -- you know --

20 Q. It's not in a separate warehouse?

21 A. The copies of the documents?

22 Q. Yeah.

23 A. Not to my knowledge.

24 Q. So somewhere in Chadbourne & Parke there are  
25 copies of all the documents from The American Tobacco

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1 Company that have been collected in previous  
2 litigation, is that correct?

3 A. That's not what I said.

4 MS. YELENICK: Objection, mischaracterizing  
5 the testimony, counsel.

6 A. I'm --

7 You know, I am trying to give you the best of my  
8 knowledge in response to your questions. I don't  
9 want to speculate.

10 Q. Okay. What about -- what about my statement was  
11 incorrect?

12 A. You said "all." You made a statement which  
13 was -- which was very different than what I testified  
14 to.

15 Q. Okay.

16 A. I'm trying to tell you that there are certain  
17 copies of certain documents at Chadbourne. I do not  
18 believe there's a comprehensive collection of  
19 everything. To say anything more than that is  
20 speculation, which I am obligated not to do.

21 Q. So you've got a collection of certain copies of  
22 certain documents produced in certain litigation  
23 previously by The American Tobacco Company; correct?

24 A. That is my understanding.

25 Q. Do you have a list of those certain copies of

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1 certain documents produced in certain litigation?

2 MS. YELENICK: Objection, work product,  
3 instruct you not to answer.

4 Q. So once again you're not even going to tell me  
5 whether a list is in existence; is that correct?

6 A. I've been instructed not to answer.

7 Can we take a break?

8 Q. Do you know -- one more question.

9 A. Sure.

10 Q. Do you know whether the American Tobacco Company  
11 maintained a list of all documents produced from its  
12 files in previous litigation?

13 A. I am not aware of such a list.

14 Q. Does that mean you know or don't know?

15 A. That means I do not know of the existence of  
16 such a list.

17 Q. Have you ever asked?

18 A. Not that precise question.

19 Q. You've never asked an American Tobacco Company  
20 employee whether or not they maintained a list of all  
21 documents collected in previous litigation; correct?

22 MS. YELENICK: Objection, asked and  
23 answered.

24 A. My answer stays the same it was the first time  
25 you asked me that question.

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1 Q. Which you did not answer; correct?

2 A. I believe my answer stays the same.

3 MR. O'FALLON: We can take a break.

4 THE WITNESS: Thank you.

5 THE REPORTER: Off the record, please.

6 (Recess taken.)

7 BY MR. O'FALLON:

8 Q. I believe when we left off we were talking

9 about --

10 (Discussion off the stenographic record.)

11 Q. When we left off, we were talking about the  
12 existence of certain indexes made of documents  
13 produced in previous litigation, and specifically I  
14 was asking questions about the Rogers litigation.  
15 Who has access to those indexes?

16 A. I'm not sure what indexes you're talking about  
17 now.

18 Q. The indexes of documents made in previous  
19 litigation.

20 MS. YELENICK: Objection, vague.

21 A. I don't believe I've testified as to the  
22 existence or non-existence of any particular index.

23 Q. Are you denying that exist --

24 Are you denying that indexes of documents  
25 produced in previous litigation have been produced?

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1 MS. YELENICK: Objection.

2 A. Do I deny that --

3 MS. YELENICK: Vague.

4 A. -- indexes have been produced?

5 Q. Yes.

6 A. The indexes called for by Judge Fitzpatrick's  
7 order, as modified by agreements with the plaintiffs,  
8 were produced in this case.

9 Q. Have all indexes of documents produced in  
10 previous litigation been made available to the court  
11 for review?

12 A. All --

13 MS. YELENICK: Objection to form.

14 A. Again, I'm not clear on -- on what you're  
15 talking about in terms of indexes prepared by whom,  
16 regarding what. I just need to have a little more  
17 specificity in your question, if possible.

18 Q. I'm speaking about indexes of documents  
19 collected or produced in other litigation.

20 A. Okay.

21 Q. Do such indexes exist?

22 A. Indexes created by whom?

23 Q. Anyone.

24 A. Do any indexes of any prior production by  
25 American exist?

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- 1 Q. Yes.
- 2 A. I believe --
- 3 Well the answer is certain indexes relating to
- 4 certain prior productions to some degree do exist, to
- 5 my understanding.
- 6 Q. How many such indexes exist?
- 7 A. I don't know the exact number.
- 8 Q. What's your approximation?
- 9 A. I don't want to speculate.
- 10 Q. Who would know the answer to that question?
- 11 A. I have no idea.
- 12 Q. Who would know the answer --
- 13 How would you find out the answer to that
- 14 question?
- 15 A. You've not limited to creation by anybody, so I
- 16 would have no idea where to start.
- 17 Q. Okay. You understand I'm talking about indexes
- 18 related to the collection or production of American
- 19 Tobacco Company documents; correct? You understand
- 20 that?
- 21 A. In prior litigation.
- 22 Q. Right.
- 23 A. Yes.
- 24 Q. Okay. Certain such indexes have been made by
- 25 Chadbourne Parke; correct?

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1 A. That is my understanding. I don't know whether  
2 they're comprehensive, --

3 Q. How many --

4 A. -- but I just know that --

5 Q. How many such indexes have been made by  
6 Chadbourne Parke?

7 A. Again, I don't know the exact number.

8 Q. Give me your best approximation.

9 MS. YELENICK: What time period are we  
10 talking about, counsel?

11 MR. O'FALLON: All time.

12 MS. YELENICK: Object, gets into work  
13 product.

14 A. All -- all I can tell you is any indices or  
15 databases called for by Judge Fitzpatrick's order.

16 Q. That's not my question, sir.

17 A. Well --

18 Q. My answer --

19 My question is specifically how many indexes  
20 which we've been talking about, which are indexes of  
21 documents collected and produced -- collected or  
22 produced from the American Tobacco Company, have been  
23 made by Chadbourne Parke? That's my question.

24 A. I don't know the answer to that.

25 Q. More than seven?

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1 A. I don't know the answer.

2 MS. YELENICK: Asked and answered.

3 Q. Who would know the answer to that question?

4 A. I don't know.

5 Q. How would you find out the answer to that  
6 question?

7 A. I honestly don't know.

8 Q. There's no one you could ask?

9 MS. YELENICK: Argumentative, counsel.

10 A. I don't want to speculate. All I'm -- all I'm  
11 telling you -- I mean --

12 Q. I'm not asking --

13 A. I assume your questions relate to the production  
14 in this case.

15 Q. Listen to my question.

16 A. I am listening to your question.

17 Q. Listen to my question and answer those  
18 questions.

19 Who would you ask if you wanted to know the  
20 answer to my question, which is how many indexes has  
21 Chadbourne & Parke created of documents collected or  
22 produced from the American Tobacco Company in  
23 previous litigation?

24 MS. YELENICK: Objection to form.

25 A. I don't know the answer to that question. I

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1 would presumably have to ask every single person  
2 who's ever been involved in -- in this litigation.

3 Q. Did you ever make that inquiry?

4 A. Inquiries that I have made in this case with  
5 regard to Judge Fitzpatrick's order were to identify  
6 the indices called for by his order as modified by  
7 agreements with the plaintiff in this case. All  
8 necessary inquiries to respond in full to the judge's  
9 order as modified by agreements with the plaintiffs  
10 were made.

11 Q. You've never asked anybody how many such indices  
12 there were at Chadbourne Parke; correct?

13 MS. YELENICK: Objection to form. "Such?"

14 A. Again, I'm not really following your question.  
15 If you're asking me about a production of indices and  
16 databases pursuant to Judge Fitzpatrick's order --

17 Q. No, no, sir. You have modified it to that -- to  
18 that extent. What I've asked you about now numerous  
19 times is I've asked you and I will ask you again:  
20 Did you ever ask anybody how many indices have been  
21 made of American Tobacco documents that have been  
22 collected or produced in previous litigation by  
23 Chadbourne Parke?

24 A. That precise --

25 MS. YELENICK: Object to question.

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1 A. That precise question, no.

2 Q. So as you stand here today, you can't tell me  
3 whether or not there may be other indices of  
4 documents collected or produced by the American  
5 Tobacco litigation in previous litigation that have  
6 not been produced to this court, correct?

7 MS. YELENICK: Objection, mischaracterizing  
8 completely the witness's testimony.

9 A. Sitting here today I have no reason to believe  
10 that there are any indices or databases called for by  
11 the court's order in this case as modified by  
12 agreements with the plaintiff that were called for to  
13 be produced which were not produced. We've fully  
14 complied with every single of the court's orders in  
15 this case and in every case. I don't know -- I don't  
16 know where you're going with this.

17 Q. Who did you ask for the location of all such  
18 indices? Who did you ask about that?

19 MS. YELENICK: Objection to form.

20 A. For the location of all indices?

21 Q. Yeah.

22 A. Or indices responsive to the -- the court's  
23 order?

24 Q. All indices related to the collection and  
25 production of documents by the American Tobacco

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1 Corporation in previous litigation.

2 MS. YELENICK: Objection to form.

3 A. I don't recall making that precise inquiry.

4 Q. Do you believe as you sit here today you know  
5 where all the indices that -- where all the indices  
6 are that have been created by Chadbourne & Parke that  
7 reflect documents collected or produced by the  
8 American Tobacco litigation in previous litigation?

9 MS. YELENICK: Objection.

10 Q. Do you think you know where all those are?

11 A. All -- I -- I don't --

12 All I know is I know that all the indices or  
13 databases called for by the court's order in this  
14 case --

15 Q. No, no. That's not -- that's not my question.  
16 My question is specifically: Do you know where all  
17 the indices are that Chadbourne & Parke has ever  
18 created related to smoking and health litigation in  
19 which American Tobacco Company documents were  
20 collected and produced? Do you know where all those  
21 are?

22 A. No.

23 MS. YELENICK: Objection to form.

24 A. No.

25 Q. You do not.

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1 A. Not all of them.

2 Q. Who does know?

3 A. I don't know.

4 Q. Are there indices in existence that have been  
5 created by Chadbourne & Parke that relate to smoking  
6 and health litigation, and specifically the documents  
7 collected or produced from the American Tobacco  
8 Company in that litigation, which have not been  
9 produced to the court?

10 MS. YELENICK: Objection to form.

11 A. All documents called for by the court's order as  
12 modified by agreements with plaintiffs were produced.

13 Q. That's not my question. That's not my question.

14 A. Then I don't understand your question.

15 MR. O'FALLON: Well then read it again.

16 (Record read by the court reporter.)

17 MS. YELENICK: Objection, mischaracterizing  
18 the court's order.

19 MR. O'FALLON: I'm not -- I'm not  
20 characterizing the court's order in any way, shape or  
21 form.

22 Q. I'm not asking you about the court's order in  
23 any way, shape or form. I'm simply asking you  
24 whether there are indexes that are in existence at  
25 Chadbourne & Parke as we've been discussing that have

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1 not been produced to the court.

2 A. I believe there are indices that were not called  
3 for by the court's order.

4 Q. How many such indices?

5 A. That I do not know.

6 Q. And those indices that you believe were not  
7 called for by the court's order, what did those  
8 indices concern?

9 A. I don't know.

10 MS. YELENICK: Objection, work product.

11 Q. Do they factually state titles of documents?

12 MS. YELENICK: Objection, work product.

13 A. I can't answer the question, given that  
14 objection.

15 Q. Did anybody from The American Tobacco Company  
16 know about those indices?

17 MS. YELENICK: Objection.

18 You may answer.

19 A. I don't know what people knew or did not know.  
20 I believe --

21 Q. Well you're the American Tobacco Company, sir.

22 A. If you'd like, I could actually finish my  
23 response.

24 I believe that persons at The American Tobacco  
25 Company may have been aware of some of the -- some of

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1 the indexes or databases prepared by Chadbourne in  
2 the course of its representation of the company.

3 Q. You've used a new term, "database." What do you  
4 mean by that term?

5 A. It could be used in different contexts.

6 Q. In the context in which you just used it, sir.

7 A. It is -- it is -- broadly defined it is -- it is  
8 some type of collection of information. I -- I --  
9 My understanding is that it is the term used in  
10 the court's orders. If I'm mistaken about that, I  
11 apologize, but that's my recollection.

12 Q. Which individuals at American Tobacco have  
13 knowledge of the indexes or databases that you've  
14 just testified about?

15 A. I don't know anybody in particular.

16 Q. Not even one person?

17 A. I don't know anybody in particular.

18 Q. Okay. Have you made any inquiries about that?

19 A. Not about that precise matter.

20 Q. Were those databases available to in-house  
21 counsel for American Tobacco?

22 A. I'm not sure what you mean by "available."

23 Q. Could they look at them?

24 A. I don't -- I don't know if they could or  
25 couldn't. I don't -- I don't understand your

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1 question.

2 Q. Did they?

3 A. I have no knowledge.

4 MS. YELENICK: Did they what, counsel?

5 Q. Did they look at them?

6 A. Did -- did anyone at The American Tobacco

7 Company look at any of the indexes --

8 Q. Right.

9 A. -- or databases you're referring to?

10 I have no knowledge that they did.

11 Q. You also have no knowledge that they didn't;

12 correct?

13 A. I have no knowledge either way.

14 Q. Who would know that information?

15 A. I don't know.

16 Q. How would you find out?

17 A. I don't know.

18 Q. You don't even know how you'd start to find out

19 the answer to that question?

20 A. I honestly don't know.

21 Q. Did any American Tobacco Company employees

22 participate in creating those indexes or databases

23 you've now testified about?

24 MS. YELENICK: Objection as to form.

25 A. To the extent that any of the indexes or

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1 databases related to materials which were collected  
2 with the assistance of company personnel, that would  
3 be the extent to my knowledge of any involvement by  
4 them.

5 Q. Do you know if in fact any such people did  
6 participate in the process?

7 A. I believe at various times in the course of  
8 collections of documents made pursuant to pending  
9 document requests in certain litigation, that company  
10 personnel were consulted to assist in that process,  
11 the process being the collection of materials.

12 Q. I believe you referred to two in-house people,  
13 in-house attorneys that may have been -- well no,  
14 strike that. Let's go back.

15 Who would be the point people dealing with  
16 document production for American Tobacco Company  
17 inside the company?

18 A. When?

19 Q. Well let's start from 1980 to 1985 first.

20 A. I -- I was not involved in any collections in  
21 that time period as far as I know.

22 Q. And you've made no effort today to acquaint  
23 yourself with that factual information before coming  
24 here to testify; correct?

25 A. I have made no effort today, that's correct.

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1 Q. Okay. How about from 1985 to 1990, who was the  
2 point person at American Tobacco responsible for  
3 assisting with document collection for pending  
4 litigation?

5 A. I don't know.

6 Q. And you've made no inquiries concerning that  
7 matter?

8 A. Not for purposes of this deposition.

9 Q. Have you made those inquiries previously for any  
10 other purpose?

11 A. I don't believe so. Not me personally.

12 Q. Well, as a representative of American Tobacco,  
13 do you hold that knowledge in your head as we sit  
14 here today?

15 A. Do I?

16 Q. Yes.

17 A. As to who was the point person for collecting  
18 documents at The American Tobacco Company?

19 Q. From 1985 to 1990.

20 A. I would just be speculating. I don't know. I  
21 don't know.

22 Q. So you don't have --

23 A. I mean --

24 Q. You don't have that information as a  
25 representative of The American Tobacco Company as you

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1 sit here today.

2 A. It might depend on what type of documents were  
3 called for by the requests. I don't -- I -- I can't  
4 make a general speculation on that.

5 Q. So there was no one person who had the overall  
6 coordinating function at American Tobacco between  
7 1985 and 1990 to work with outside counsel and  
8 in-house counsel generically regarding production of  
9 documents in ongoing litigation; is that your  
10 testimony?

11 A. Again, I really can't testify as to matters that  
12 are not within my knowledge. My understanding would  
13 be that whatever inquiries were necessary were made.  
14 I don't know what inquiries were made of in response  
15 to a given request.

16 Q. So as a representative of The American Tobacco  
17 Company, as you sit here today you can't testify on  
18 the subject that I've just asked you about, which is  
19 who was the point person inside American Tobacco  
20 Company for the collection and production of  
21 documents from 1985 to 1990; correct?

22 A. You're assuming that there was one person who,  
23 for all the productions in a given timeframe, would  
24 have been the point person. I don't know who the  
25 point person was with regard to a given production.

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1 As I've indicated, it depends -- it might depend on  
2 the type of requests in that given case.

3 You know, again, I hope at some point we get to  
4 the Minnesota litigation.

5 Q. What are the name of the individuals that you  
6 worked with in the collection and production of  
7 documents at The American Tobacco Company during your  
8 career who worked in a, quote, unquote, supervisory  
9 role? In other words, I'm not looking for employees  
10 on the floor level, but somebody who would have  
11 served -- or those -- those people who would have  
12 served in some coordinating function, some interface  
13 between counsel and the collection process.

14 A. To the best of my knowledge, I personally did  
15 not deal with anybody at The American Tobacco Company  
16 in connection with the collection of such material.

17 Q. Okay. But you're now sitting here as a  
18 representative of The American Tobacco Company, so  
19 with that collective knowledge, who did The American  
20 Tobacco Company give that responsibility to, people  
21 or persons, to assist their attorneys in collecting  
22 documents? Do you know that?

23 A. I don't know that. All I can tell you is, to  
24 the best of my understanding, whatever persons would  
25 have facilitated the complete and prompt collection

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1 of materials in response to a given request would  
2 have been made available. I don't know in given  
3 circumstances who those people would have been. I'm  
4 sure it varied.

5 Q. And you can't give me any names as you sit here  
6 today.

7 A. No one --

8 I'd just be speculating and I -- I really can't  
9 do that.

10 Q. Have you ever specifically dealt with anybody  
11 inside The American Tobacco Company other than  
12 counsel, in-house counsel, concerning the collection  
13 and production of documents?

14 A. Again, I -- I may have. I don't recall anybody  
15 in particular who I personally dealt with at The  
16 American Tobacco Company with regard to this precise  
17 matter.

18 Q. When you say "this precise matter," what are you  
19 talking about?

20 A. What you just asked me about.

21 Q. Which is the collection and production of  
22 documents over a certain time period, in this case  
23 1985 to 1990; correct?

24 A. I --

25 Sitting here today, I cannot identify an

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1 individual at The American Tobacco Company in  
2 response to those requests you've just made.

3 Q. How about 1990 to 1994?

4 A. Again, I really -- I -- I --

5 One, I don't know for a fact that I did have  
6 such inquiries, and I don't remember anybody in  
7 particular.

8 Q. Okay.

9 A. I'm giving you the best of my understanding and  
10 recollection. That's, I believe, all I can do.

11 Q. With all due respect, I'm not just entitled to  
12 your best understanding and recollection, I'm  
13 entitled to American Tobacco Company's best  
14 understanding and recollection.

15 A. And I'm giving you that to the best of my  
16 ability.

17 Q. Well, did you ever think about asking somebody  
18 before coming to this deposition about the policies  
19 and procedures American Tobacco followed for document  
20 production prior to 1994? Did you ever do that?

21 A. Not in connection with this deposition.

22 Q. Have you done that in connection with something  
23 else?

24 A. Anyone at The American Tobacco Company?

25 Q. Have you ever made that inquiry on behalf of

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1 anybody else. I mean you just limited your answer.  
2 You said you have not asked or made the inquiry of  
3 American Tobacco who was responsible for document  
4 productions prior to 1994.  
5 A. For purposes of this deposition.  
6 Q. Right.  
7 A. Right.  
8 Q. Have you ever made that inquiry previously in  
9 any other context?  
10 A. As to who is responsible for document production  
11 at The American Tobacco Company?  
12 Q. Yes.  
13 A. I do not believe so.  
14 Q. Before we got into this area we were talking  
15 about previous collections of documents at The  
16 American Tobacco connected with other smoking and  
17 health litigation, and you talked specifically about  
18 the Rogers case. What other cases do you know of in  
19 which there were specific collections of smoking and  
20 health documents at The American Tobacco Company?  
21 A. To my knowledge that is the only one that I was  
22 personally involved in.  
23 Q. Okay. But how about The American Tobacco  
24 Company, how many other such collections were they  
25 involved in?

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1 A. I don't -- I don't know how many different  
2 productions were made on behalf of The American  
3 Tobacco Company. All I know is whenever there were  
4 requests served that called for the production of  
5 documents, that responsive documents were obtained  
6 and produced.

7 Q. That's not what I'm asking. I'm asking how many  
8 such productions took place prior to 1994 and the one  
9 you just testified about.

10 MS. YELENICK: Objection, beyond the scope.

11 A. I honestly don't know. I -- I -- I don't know.

12 Q. Who would know?

13 A. I don't know of anyone in particular who would  
14 have that comprehensive knowledge.

15 Q. Well, what people would have some of that  
16 knowledge?

17 A. Presumably the -- the attorneys who worked on a  
18 given case might know what documents had been  
19 produced in response to requests in that case.

20 Q. Okay. Specifically I'm asking about The  
21 American Tobacco Company. What people at American  
22 Tobacco would have known that information?

23 A. I honestly don't know the answer to that  
24 question.

25 THE REPORTER: We have to change tape. Off

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1 the record, please.

2 (Recess taken.)

3 BY MR. O'FALLON:

4 Q. Just to clarify, as a representative of The  
5 American Tobacco Company, you do not know of any  
6 document collection specifically prior to 1994, other  
7 than the Rogers document collection that you've  
8 already testified about; correct?

9 A. I don't believe that's what I testified to.

10 Q. Do you know of some specific document collection  
11 prior to 1994 other than the Rogers collection?

12 A. I know that in response to discovery requests in  
13 other cases, responsive documents would have been  
14 collected. I don't recall when that was and with  
15 regard to which particular case.

16 Q. So you can't tell me as you sit here today of  
17 any other specific document collection done prior to  
18 1994; correct?

19 MS. YELENICK: Objection, asked and  
20 answered.

21 A. I mean we have produced --

22 The American Tobacco Company has produced  
23 documents in other cases.

24 Q. But you can't tell me the specific name of any  
25 other cases in which you know that there were

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1 documents collected, you as a representative of The  
2 American Tobacco Company; correct?

3 A. I don't know with regard to a given production  
4 or case whether a special collection was made. I am  
5 aware that in some prior litigation the plaintiffs  
6 have requested documents produced in another prior  
7 litigation. I don't know in a given case whether a  
8 collection specific to that case would have been  
9 made.

10 Q. The only specific collection of documents you  
11 know about is the Rogers collection; correct?

12 MS. YELENICK: Objection, mischaracterizing  
13 the testimony.

14 A. I'm not --

15 I believe that's not what I said.

16 Q. Can you tell me the case names of any other  
17 cases in which a document collection was made?

18 A. I know other cases where productions were made.  
19 I don't know about whether in that case a specific  
20 collection was made for that production. As I  
21 indicated before, in some cases that would not have  
22 been necessary.

23 Q. At some point in time a first collection would  
24 have had to have been done; correct? That is, the  
25 very first time litigation was undertaken and

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1 documents were produced from The American Tobacco  
2 Company, a first, original collection had to be made;  
3 correct?

4 A. That would be a reasonable assumption.

5 Q. Okay. And thereafter it may be that you only  
6 have to look back to that collection to produce  
7 documents in subsequent litigation; correct?

8 A. It would depend on the request in a given case.

9 Q. Absolutely.

10 When did the first such collection take place?

11 A. I have no idea. I would imagine it would be at  
12 some point after the first lawsuit was filed.

13 Q. Do you know whether Chadbourne & Parke was  
14 involved in that first collection?

15 A. I don't know that for a fact. We have been  
16 counsel to The American Tobacco Company for a period  
17 of time, which I don't know, but I would imagine if  
18 we were counsel to them at that point in time, we  
19 might have been involved in that collection.

20 Q. Is it your belief that copies of the documents  
21 collected at that time would have been sent to  
22 Chadbourne Parke?

23 MS. YELENICK: Objection to form.

24 A. You're talking about the first time.

25 Q. We're talking about the very first collection.

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1 A. Again, this is a subject that I am not familiar  
2 with, that I have not -- do not believe is part of my  
3 notice here. I don't want to speculate. I'm very  
4 careful not to speculate.

5 Could you repeat your question? I'll answer.

6 Q. Certainly.

7 The very first collection of documents that was  
8 ever made from American Tobacco Company, do you know  
9 whether copies of those documents were sent to  
10 Chadbourne Parke?

11 A. Okay. You're talking about the first collection  
12 for production in a given case.

13 Q. Right. A smoking and health case.

14 A. And you're asking me whether I know whether a  
15 copy of those documents was sent to Chadbourne &  
16 Parke.

17 Q. Absolutely.

18 A. I don't know for a fact whether that is or is  
19 not the case. I could make some assumptions, which I  
20 don't want to do; I want to testify as to facts  
21 within my knowledge. And given the limitation of  
22 facts within my knowledge, I don't know that for a  
23 fact.

24 Q. Who would know that?

25 A. I would presume it would be the attorneys who

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1 worked on that matter.

2 Q. Who worked on the very earliest matters at  
3 Chadbourne Parke for The American Tobacco Company?

4 A. I don't know who in particular worked on a given  
5 matter prior to my coming to the -- the firm.

6 Q. Do you have some institutional knowledge based  
7 on your time at Chadbourne Parke and your work in  
8 these files as to who those people were?

9 MS. YELENICK: Objection, far beyond the  
10 scope of this deposition.

11 A. That would be speculating, and I really don't  
12 feel comfortable doing that.

13 Q. Was Frank Decker a Chadbourne Parke attorney?

14 A. Not to my knowledge.

15 Q. Do you know who the attorneys were that worked  
16 on the first smoking and health litigation for  
17 Chadbourne & Parke back in the 1960s?

18 MS. YELENICK: Asked and answered, I  
19 believe, counsel.

20 A. I really don't want to speculate. On a given  
21 matter, I do not know who the counsel of record were  
22 for that case.

23 Q. Well The American Tobacco Company would  
24 certainly have that information within its collective  
25 history. Can you as a representative of The American

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1 Tobacco Company tell me who those people were?

2 MS. YELENICK: Objection to form.

3 A. I'm trying to answer your question based on the  
4 information that I have. I do not know for a given  
5 matter who in particular at Chadbourne worked on that  
6 case. I imagine that to some degree there are --  
7 there may be documentation such as a filed complaint  
8 in a given jurisdiction and an answer which might  
9 reflect that information.

10 Q. So all that information --

11 A. I don't --

12 Q. -- would be at some point available to you;  
13 correct?

14 A. I don't -- I don't know. I mean it's not  
15 available to me currently. I don't -- I don't know.  
16 I have not looked into that in connection with my  
17 preparation for this deposition.

18 Q. Do you guys --

19 Do you at Chadbourne Parke keep a file of all  
20 the litigation pleadings that have been filed over  
21 time?

22 MS. YELENICK: Objection, work product.  
23 Instruct you not to answer.

24 Q. Can you undertake to find out for me who would  
25 know whether or not a copy was kept at Chadbourne &

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1 Parke of that original document collection?

2 MS. YELENICK: Counsel, we would be glad to  
3 entertain any requests you have in a letter after  
4 this deposition.

5 MR. O'FALLON: I'm going to do it right  
6 now. I've got a live witness and he's representing  
7 The American Tobacco Company. I want to know whether  
8 The American Tobacco Company will endeavor to obtain  
9 for me that information.

10 A. I would suggest that you follow counsel's  
11 suggestion and submit a letter.

12 Q. Is that a "yes" or a "no," sir?

13 A. My answer --

14 I'm not going to undertake any obligations at  
15 this time other than to appear, as I have done, in  
16 your office, in your city, to respond to questions  
17 regarding your notice of taking deposition. This is  
18 not a document request, this is a deposition, and I'm  
19 prepared to answer questions when and if we get to  
20 the questions that are subsumed within my notice.

21 Q. So your answer is no, you will not undertake to  
22 find me the identity of the Chadbourne Parke  
23 attorneys who were first responsible for smoking and  
24 health litigation.

25 MS. YELENICK: Objection to form.

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1 A. Subject to the comments of my counsel, the  
2 answer is no.

3 Q. Do you have any idea of when that original  
4 collection was made from American Tobacco Company?

5 MS. YELENICK: Objection to form.

6 A. Which original collection?

7 Q. The original collection of documents relating to  
8 smoking and health from The American Tobacco Company  
9 that we've been talking about.

10 A. For the first case that was ever filed?

11 Q. The first collection of documents, sir.

12 A. Uh-huh.

13 Q. I'm asking you about the first collection of  
14 documents. Are we clear about that?

15 A. By -- by Chadbourne & Parke or by The  
16 American --

17 Q. By The American Tobacco Company.

18 A. The first collection by The American Tobacco  
19 Company.

20 Q. For litigation, correct.

21 A. I have no idea about any efforts by The American  
22 Tobacco Company with regard to those early  
23 collections.

24 Q. After that original collection, were subsequent  
25 collections made to add to that original collection?

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1 MS. YELENICK: Objection to form.

2 A. I'm not sure what you mean by adding to the  
3 original collection.

4 Q. Well you have an original --

5 A. Can I finish? Can I finish my answer?

6 Q. Well you said you don't understand it, so I'll  
7 go ahead. Since you didn't understand it, I'll go  
8 ahead and clarify it.

9 A. I'd appreciate not being interrupted.

10 Q. Well when you start off something saying "I  
11 don't understand," there's really no sense to go on  
12 with your answer until I clarify it.

13 A. So you've now explained your reason for  
14 interrupting my answer.

15 Q. Yes, I have. And if you don't mind I'll ask  
16 another question.

17 A. Please do.

18 Q. There was an original collection undertaken;  
19 correct?

20 A. My understanding would be in the course of some  
21 litigation where documents were requested, that there  
22 would have been a review of appropriate company files  
23 in response to those requests.

24 Q. And again we're talking generically here about  
25 smoking and health litigation. Okay? Will you agree

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1 to that?

2 A. I don't know what you mean "we're talking now."

3 I thought you were talking about in whatever

4 litigation it was that the first collection of

5 materials in response to a request was made.

6 Q. Okay. Were you when you made that answer

7 assuming that I was referring to smoking and health

8 litigation?

9 A. Yes.

10 Q. Okay. And let's just have an agreement between

11 you and I that as we go forward on this line of

12 questioning, what I'm talking to you about is smoking

13 and health litigation. Okay?

14 A. Sure.

15 Q. Can we have that agreement?

16 And is it okay with you that by "smoking and

17 health litigation," we mean allegations by whomever

18 that American Tobacco Company products caused

19 physical injury to some human being? Can we have

20 that agreement?

21 A. Sure.

22 Q. Okay. Once that original collection was

23 undertaken, and then over the course of time of

24 course we had additional suits filed, were additional

25 collections made to add to the original collection?

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1 Or every time a collection was done, was it done de  
2 novo; in other words, from the very beginning again?

3 A. Having not been involved in it, I do not know  
4 the precise answer to your question. All I can say  
5 is for a given case where there were specific  
6 requests served, that a collection adequate to  
7 respond to those requests fully would have been  
8 made. Whatever inquiry was necessary and whatever  
9 collection may or may not have been necessary would  
10 have been performed to fulfill in full the  
11 obligations of the company to comply with its  
12 discovery obligations.

13 Q. And from that original collection, up until the  
14 1994 Rogers collection, do you know how many  
15 additional collections took place in that time  
16 period?

17 A. No, I don't.

18 MS. YELENICK: Objection to form.

19 Q. And you can't tell me who undertook those  
20 collections; correct?

21 A. Again, I don't want to generalize and I don't  
22 want to speak about things that are outside the scope  
23 of my knowledge. My understanding is that when there  
24 were document requests which called for the  
25 production of information, that there would be

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1 Chadbourne attorneys working on the matter along  
2 with, as necessary, company employees to locate and  
3 collect the materials responsive to those requests.

4 Q. But you can't tell me any specific time  
5 instances of when those collections occurred;  
6 correct?

7 MS. YELENICK: Objection, asked and  
8 answered.

9 Q. For instance, Lorillard could actually tell me  
10 each time they went through and did a collection. I  
11 take it that you, as a representative of American,  
12 cannot give me that same information.

13 A. Counsel, this is --

14 I am here on behalf of The American Tobacco  
15 Company, not on Lorillard, despite the fact that you  
16 identified Lorillard on the letter identifying the  
17 documents for this deposition.

18 Q. You know, sir, I made a mistake. Thank you for  
19 pointing that out.

20 A. I'm here for The American Tobacco Company. I'm  
21 here to answer questions for The American Tobacco  
22 Company. I cannot speak for any other company.

23 Q. And again, I just want to make it clear: As a  
24 representative of The American Tobacco Company, you  
25 can't specifically tell me each time a subsequent

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1 collection was made after the original collection

2 until we get to 1994 and the Rogers collection;

3 correct?

4 A. That's correct. I do not know the complete

5 sequence of where whatever collections were made were

6 made.

7 Q. Nor can you tell me the name of the individual

8 or individuals who would know that complete sequence;

9 correct?

10 A. It would depend on -- on which case you're

11 talking about.

12 Q. Well since you don't know the individual cases,

13 you can't tell me that information; right?

14 A. I do not know the individual cases for which

15 specific collections of materials were made from The

16 American Tobacco Company.

17 Q. Can you tell me any individual who would have

18 the specific facts of what additional collections

19 were made between the original collection and the

20 1994 collection?

21 A. I don't know --

22 Your question is assuming some connection

23 between a given collection and a prior collection. I

24 don't know that that is the case. All I know is that

25 for given cases and given productions, materials

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1 responsive and called for by those requests would  
2 have been collected and produced.

3 Q. Okay. Just so we're clear, you can't tell me  
4 whether, after the original collection, the  
5 subsequent collections were attempts to add to the  
6 original collection or whether they were collections  
7 that started again from scratch; correct?

8 A. That's correct. I don't know for a fact with  
9 regard to a given response to a given set of document  
10 requests whether -- which way that was done.

11 Q. Do you know generally how it was done?

12 A. I don't think there's a way of saying generally  
13 with regard to this. I know that the normal  
14 procedure is when you get requests, you make whatever  
15 inquiry is necessary to respond to those requests.  
16 If the plaintiffs are saying give me the documents  
17 produced in another case, then you would presume that  
18 a new collection is not required.

19 Q. When a request originally comes in to The  
20 American Tobacco Company, does The American Tobacco  
21 Company first review documents that have been  
22 previously collected to determine their  
23 responsiveness before undertaking a wholesale sweep  
24 of the other documents?

25 MS. YELENICK: Objection to form.

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1 A. You're saying when a request comes in to The  
2 American Tobacco Company, --

3 Q. Yes.

4 A. -- what does The American Tobacco Company do?

5 Q. Absolutely.

6 A. My understanding of what the company does is it  
7 consults with its attorney as to how to respond to  
8 those requests.

9 Q. But then physically what is done?

10 A. Physically what is done is to the extent steps  
11 are necessary to pro -- to respond to those requests,  
12 those steps are taken, whatever they may be.

13 Q. Well physically, then, are the previous  
14 collections of documents looked at?

15 A. Again, I'm not -- I'm not aware of that being  
16 the case with regard to a specific production.

17 Q. So is it your testimony that the previous  
18 collection of documents is not looked at?

19 MS. YELENICK: Objection.

20 A. I didn't say that.

21 MS. YELENICK: Beyond the scope.

22 Q. I'm asking about Rogers. In Rogers, was the  
23 previous collection of American Tobacco Company  
24 reviewed?

25 MS. YELENICK: Objection, beyond the scope

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1 of Rogers as well.

2 A. You're asking in connection with the Rogers  
3 production, were previous collections of documents  
4 reviewed.

5 Q. Yes, I am.

6 A. To my knowledge, previous collections of  
7 documents --

8 To my knowledge, in the Rogers case, a  
9 collection was made specific for the Rogers  
10 production.

11 Q. As part of that collection were the previous --  
12 previously-collected documents reviewed?

13 A. To the --

14 MS. YELENICK: Objection to scope.

15 A. I'm also concerned about crossing the line to  
16 work product here. But to the extent that  
17 document --

18 To the extent that the original documents of  
19 which copies may have existed in prior productions  
20 happened to overlap the two productions, then they  
21 might have been -- they would have been reviewed for  
22 the Rogers production. My understanding is that in  
23 responding to a given production, one makes inquiry  
24 as to where company documents responsive to that  
25 request would have maintained at the company.

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1 Q. Do you know whether American Tobacco kept a  
2 separate copy of all the documents that they had  
3 previously collected for previous litigation and held  
4 those documents apart from their other documents?

5 A. I do not know for a fact. I do not believe that  
6 that is the case.

7 Q. I believe you've talked about certain warehouses  
8 that are in existence for American Tobacco Company;  
9 correct?

10 A. I have mentioned a couple of warehouses.

11 Q. When you grab a box of documents from one of  
12 those warehouses and flip through it as part of your  
13 document review, can you tell in looking through the  
14 box whether or not the documents contained in the box  
15 have been previously collected or produced in prior  
16 litigation? Is there any physical marking on those  
17 documents?

18 MS. YELENICK: Objection, work product.

19 MR. O'FALLON: I'm asking specifically  
20 what's on a physical document.

21 MS. YELENICK: Same objection.

22 Q. So now you're saying that it's work product --

23 Let me ask you this: Could an American Tobacco  
24 Company employee go in and grab a box of documents  
25 and, in looking through that box of documents, be

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1 able to tell whether or not the lawyers had been  
2 through that box of documents previously or not?  
3 A. Are you speaking today?  
4 Q. I'm speaking today.  
5 A. Today there are no American Tobacco employees.  
6 Q. Then I'm going to speak in 1994, and  
7 specifically I'm going to talk about June of 1994.  
8 A. Okay.  
9 Q. How about that?  
10 A. All right. Please ask your question.  
11 Q. My question is: In June of 1994, could an  
12 American Tobacco Company employee, who's in the  
13 warehouse, --  
14 A. Uh-huh.  
15 Q. -- go in, physically remove a box of documents,  
16 open that box of documents up, look through it, and  
17 be able to tell what had previously been produced or  
18 collected in prior litigation?  
19 A. This is an American Tobacco Company employee  
20 looking at documents maintained in the warehouses  
21 maintained by The American Tobacco Company.  
22 Q. I think I've been pretty clear about that.  
23 A. I just want to make sure I got that right.  
24 My understanding is that they could not tell  
25 that.

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1 Q. I'm going to ask you to look at a document  
2 that's been previously marked as Plaintiffs' Exhibit  
3 1010. Do you recognize that document?

4 A. Take a quick look at it. I believe I do.  
5 Yes. This is the Case Management Order in this  
6 case.

7 Q. Okay. And would you specifically look at  
8 Exhibit A of the Case Management Order.

9 A. Okay.

10 Q. Do you recognize that document?

11 A. Yes. That is the amended order for preservation  
12 of records in the Castano case.

13 Q. American Tobacco Company was one of the  
14 companies that were sued in the Castano case;  
15 correct?

16 A. The caption indicates that The American Tobacco  
17 Company was the first defendant listed.

18 Q. And is American Brands also included in that  
19 case?

20 A. I honestly don't know the answer to that  
21 question.

22 Q. What was the date of this order, the order in  
23 the Castano case?

24 A. The Castano order, which is attached as Exhibit  
25 A, bears a date of July 5, 1994. There's a date of

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1 entry on the front of July 6, 1994.

2 Q. As of this date, and we'll use the later date,  
3 July 6, 1994, what steps did The American Tobacco  
4 Company take to make sure that the documents listed  
5 in this order were preserved?

6 A. My understanding is that the company received a  
7 copy of this order, and all steps necessary to comply  
8 with it were made.

9 Q. Well specifically what was done?

10 A. My understanding is that everything that the  
11 order required be done was done.

12 Q. Well what physically was done? Were documents  
13 generated?

14 A. We'd have to go through the order.

15 MS. YELENICK: Objection, vague.

16 A. We'd have to go through the order and see what  
17 it requires. And --

18 Q. Were American --

19 A. -- I will tell you that whatever the order  
20 requires to be done was done.

21 Q. Were American Tobacco Company employees at this  
22 point instructed to preserve all their records?

23 A. My understanding is that pursuant to the order  
24 in the Castano case, to which you have referred, that  
25 American Tobacco employees were instructed to comply

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1 fully with this order, which they did.

2 Q. How was that accomplished physically?

3 A. I don't know physically how that information was  
4 conveyed within the company. I do know that all  
5 steps required by this order were implemented.

6 Q. How do you know that?

7 A. That is my understanding sitting here as a  
8 representative of The American Tobacco Company.

9 Q. Based on what?

10 A. Based on my understanding that The American  
11 Tobacco Company complies with all orders imposed upon  
12 it, including this order in particular.

13 Q. Based on what facts? What steps were physically  
14 taken?

15 A. My knowledge is that this order was communicated  
16 to the company, and it was implemented.

17 Q. How?

18 A. That is -- I have --

19 I have been told that. I don't recall who told  
20 me that, but that is my complete assumption, and I  
21 have never found any indication to the contrary  
22 whatsoever.

23 Q. What steps did The American Tobacco Company take  
24 to make sure that this was in fact complied with?  
25 Were memos sent to employees?

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1 A. I don't know that specifically. I know that the  
2 substance and requirements of this order were  
3 communicated, as necessary, and that all steps were  
4 taken to comply fully with this order.

5 Q. How were the substance --

6 How was the substance of this memo communicated  
7 to The American Tobacco Company employees?

8 A. I do not know specifically how that information  
9 was communicated to the employees. I also don't know  
10 that it was communicated in only one manner. I know  
11 that whatever steps were necessary to communicate it  
12 and to guarantee the -- the compliance with this  
13 order were taken.

14 Q. Well how can you know that without actually  
15 taking a look at the memos used to communicate the  
16 information or knowing specifically what was done?

17 A. Because it is my understanding that those steps  
18 were taken as necessary.

19 Q. Based on what?

20 A. Based on --

21 Q. What's the factual basis of your understanding?  
22 What was factually done by The American Tobacco  
23 Company to make sure that this order was implemented?

24 A. My knowledge is that this order was, as I said,  
25 conveyed to the company, and the company indicated to

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1 its employees what steps had to be taken, and they  
2 were taken. I do not know sitting here today the  
3 specific steps that were taken in terms of  
4 communicating the information other than to know that  
5 it was communicated and it was implemented. And as I  
6 said before, I have no knowledge that anything other  
7 than that was ever done.

8 Q. So you can't tell me whether or not a copy of  
9 this order, which is Exhibit A, was physically given  
10 to all The American Tobacco Company employees;  
11 correct?

12 THE WITNESS: Would you repeat the  
13 question.

14 (Record read by the court reporter.)

15 A. I do not know for a fact whether or not a copy  
16 of this particular order was given to all employees.

17 I briefly reviewed it. I don't see anything  
18 that says -- and I may be misreading it, but I don't  
19 see anything that says specifically that a copy of  
20 this has to be given to each employee. If it does  
21 say that, then I would assume that that was exactly  
22 what was done. If it does not say that, then my  
23 understanding would be that the information conveyed  
24 in this order and the requirements of the order were  
25 conveyed in the manner best guaranteed to assure the

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1 implementation of the order.

2 Q. But you don't know what manner in which this  
3 information was conveyed; correct?

4 A. I do not know the precise mechanism by which  
5 this information was conveyed to all employees of the  
6 company.

7 Q. Therefore you cannot state with certainty that  
8 in fact it was conveyed; can you?

9 MS. YELENICK: Objection.

10 A. It is my belief that it was.

11 Q. Have you ever asked employees what they  
12 specifically knew about this document retention?

13 A. I have never specifically asked that question.

14 Q. So you've never asked employees whether or not  
15 they were specifically asked to retain documents in  
16 respect to the Castano litigation; correct?

17 A. I have not asked an employee that particular  
18 question.

19 As I said before, my understanding is the order  
20 was fully complied with, as all orders were fully  
21 complied with, and I have no information contrary to  
22 that.

23 Q. You have not seen a memo conveying the  
24 requirement from Castano that all documents be  
25 retained going to American Tobacco Company employees;

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1 correct?

2 A. I do not recall seeing such a memo. My not  
3 having recalled seeing it does not mean it does not  
4 exist.

5 Q. If such a memo does exist, would it have been  
6 produced in the Minnesota litigation?

7 A. Documents responsive to the requests in the  
8 Minnesota litigation were reviewed, and those that  
9 are not privileged either were or will be produced in  
10 this case.

11 Q. I'm a little concerned about this "will be  
12 produced." How many documents does American have  
13 left to produce in this litigation that have not  
14 already been produced?

15 A. I don't know the exact number.

16 Q. Why don't you give me an approximation.

17 A. I think in proportion to the 2.7 million pages  
18 that have been produced, I would say that the  
19 materials remaining to be produced in this case are a  
20 drop in the bucket.

21 Q. How many?

22 A. I don't know precisely.

23 Q. How many boxes?

24 A. I --

25 Again, I don't know precisely.

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1 Q. Is it your --

2 Is it your testimony as you sit here today that  
3 you have not yet complied with the court's order that  
4 all responsive documents be produced by December  
5 31st, 1996?

6 MS. YELENICK: Objection.

7 A. First of all, that is a misstatement of the  
8 situation. As you I believe are well aware, there  
9 were certain requests for which production was  
10 required by January 15th. And I will not put up with  
11 misstatements of the judge's orders in this case.

12 As you also know, the plaintiffs to date have  
13 continued to produce documents in this case. In the  
14 course of privilege review, some documents are being  
15 ultimately determined not to be privileged and are  
16 being produced.

17 Q. How many such documents --

18 A. Again --

19 Q. -- do you think remain?

20 A. I would just be speculating and estimating. I  
21 don't want to do that.

22 Again, it is a very small percentage compared to  
23 what has been produced in this case.

24 Q. Look, you're the person who's primarily  
25 responsible --

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1 A. That's correct.

2 Q. -- for that information. You're the person  
3 who's been identified here today as a representative  
4 of American Tobacco. I'm entitled to your best  
5 estimation of how many additional documents will be  
6 produced by American Tobacco Company in this  
7 litigation as we sit here today. I'm not talking  
8 about some that may be requested after this date, but  
9 as we sit here today what documents does American  
10 Tobacco Company believe it still has left to  
11 produce?

12 MS. YELENICK: Objection to form.

13 A. All I'm telling you is I cannot answer that  
14 question with other than pure speculation because  
15 my -- just let me finish. Excuse me.

16 My understanding is that what we're basically  
17 talking about here are documents which upon further  
18 review are determined to be non-privileged and  
19 therefore can be produced. Sitting here today I do  
20 not know what the results of the end of that process  
21 are going to reflect.

22 Q. Is it your testimony that as we sit here today  
23 your privilege logs are not finished?

24 A. That's correct.

25 Q. How many entries have been placed on the

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1 privilege logs produced to date, approximately?

2 A. By American?

3 Q. Yes.

4 A. Approximately 200, 240. Two hundred or 240,  
5 something like -- in that range.

6 Q. How many additional documents are being reviewed  
7 for potential either production or placement on the  
8 privilege logs?

9 A. I don't know precisely.

10 And it's tough to talk about documents, because  
11 I don't know what -- what, you know, different  
12 lengths of documents might be. There still remain  
13 documents to be finally reviewed for this process.

14 Q. Why don't you give me a box estimation, because  
15 we're used to dealing with boxes over at the  
16 depository. How many boxes do you think there are?

17 A. In terms of what remains to be either withheld  
18 on grounds of privilege or produced?

19 Q. Yes.

20 A. Got to do some math.

21 Again, I don't want to speculate. I'm being  
22 very careful.

23 Q. Well if you want to call back and have somebody  
24 go through a more accurate count, and if you can give  
25 me that information after the break, I'm more than

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1 happy to have you do that.

2 A. Well I just --

3 Q. And I guess you have somebody sitting back there  
4 with a room full of documents now looking for them,  
5 so if you want to call somebody specifically, that  
6 will be fine.

7 A. Sitting here today my best estimate is that  
8 there do remain documents, as we've talked about, to  
9 be either ultimately withheld or -- or freed up and  
10 produced. My estimate of -- of the volume we're  
11 talking about might be maybe something in the nature  
12 of -- of 20 to 30 thousand pages. And again, I don't  
13 know how many of those would be ultimately found  
14 non-privileged or not.

15 As I indicated, we have produced to date in  
16 excess of 2.7 million pages in this case.

17 Q. And again, that estimate is -- is your estimate  
18 of pages, not documents; correct?

19 A. Right. Right. Sitting here today, that's my  
20 best understanding of -- of what that number would  
21 be.

22 Q. When did you first receive requests for  
23 production of documents in the Castano case?

24 MS. YELENICK: Objection, scope.

25 A. When did I first receive --

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1 Q. Well when did -- "you" again are American  
2 Tobacco Company. I mean I -- again, I hate --  
3 A. Okay.  
4 Q. -- to keep restating that. I think as an  
5 attorney you understand that.  
6 A. Well, but there's some questions --  
7 Q. And --  
8 No, --  
9 A. I'm sorry.  
10 Q. -- there really aren't. Every time I'm asking  
11 you a question here, Mr. Savell, I'm asking you in  
12 the context of American Tobacco. I've tried to make  
13 that relatively clear to you at the beginning. And  
14 since you're an attorney and have been for, I think  
15 you represented in some meet and confer, 14 years,  
16 certainly you understand that when you sit here  
17 you're an American Tobacco Company representative.  
18 So when I ask you questions, I'm not asking you,  
19 Larry Savell, lawyer for Chadbourne Parke, I'm asking  
20 you, Larry Savell, holder of knowledge for American  
21 Tobacco Company. Okay?  
22 A. Some of your questions have asked for my  
23 personal knowledge as opposed to the company. But  
24 let's put that aside. Could you repeat the question,  
25 please?

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1 MR. O'FALLON: Sure. Why don't you read it  
2 back, Dick.

3 (Record read by the court reporter.)

4 A. The company would have received the requests for  
5 production shortly after they were served by the  
6 plaintiffs in that case.

7 Q. Do you know when that was?

8 A. You'd have to show me the document requests.

9 Q. I don't know. That's why I'm asking you.

10 A. Sitting here today, I don't have the date in my  
11 mind for when a given production request in a given  
12 case was served.

13 Q. Were there requests made prior to December  
14 31st -- or strike that.

15 Were there requests made prior to December 1994  
16 for production of documents in the Castano case?

17 MS. YELENICK: Scope, objection.

18 A. I don't want to speculate. I -- I believe that  
19 is the case, but I don't know for a fact.

20 Q. Was a document collection process undertaken at  
21 American Tobacco prior to December of 1994?

22 A. Was any document collection process undertaken?

23 Q. And I'm really now going for the year  
24 immediately preceding 1994. I believe you talked  
25 about the Rogers collection, so what I'm really

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1 looking for is from the Rogers collection until the  
2 time American Tobacco Company was sold and  
3 transferred to B&W, was a document collection  
4 undertaken?

5 A. I am not aware of any such collection in that  
6 time period, from the time period of the Rogers  
7 collection to the -- the sale of the company.

8 Q. Before we go into the actual physical transfer  
9 of company documents from American to B&W, I want to  
10 ask and try to clarify what American Tobacco looked  
11 like on the day the state of Minnesota sued it in  
12 August of 1994, and I also want to talk about whether  
13 or not there were ever document transfers made at any  
14 point in time from American Tobacco to any other  
15 entity prior to the time this case was filed in  
16 August of 1994. Let me go to the first question  
17 first.

18 A. Are we done with the Castano stuff now?

19 Q. Well you can keep it there in front of you.

20 A. Okay.

21 Q. Were there ever any transfer of documents from  
22 any American Tobacco company to any other entity  
23 prior to December of 1994?

24 A. You are talking about transfer of original  
25 company documents?

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1 Q. I am.

2 A. To the best of my understanding, on occasion, as  
3 I believe I've testified, certain original documents  
4 of The American Tobacco Company would have been sent  
5 to Chadbourne & Parke as -- who acted as a custodian  
6 for them in connection with their representation of  
7 the company.

8 Q. Were all such original documents returned to  
9 American Tobacco prior to the time American Tobacco  
10 was physically transferred to B.A.T.?

11 A. My understanding is that at various times,  
12 including the present time, that Chadbourne has  
13 served as a custodian for certain of American's  
14 documents in connection with its representation of  
15 the company. All materials of The American Tobacco  
16 Company, including materials maintained at Chadbourne  
17 & Parke, originals maintained at Chadbourne & Parke,  
18 would have been reviewed for -- when appropriate, for  
19 pending document requests that called for documents  
20 from The American Tobacco Company.

21 Q. What documents does Chadbourne & Parke currently  
22 maintain for American Tobacco Corporation as -- as a  
23 custodian of documents?

24 A. Again, I don't know specifically what documents  
25 are currently being maintained at the firm on -- on

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1 that basis. It is my understanding that ultimately  
2 everything will be in -- in the warehouse.

3 Q. Do you know whether, as part of the various  
4 corporate reorganizations that American Tobacco  
5 Company and American Brands have went through, that  
6 documents have been physically moved from one  
7 location to the other between those two entities?

8 MS. YELENICK: Objection to form.

9 A. I don't completely understand your question, but  
10 I'm not aware of any physical transfer of documents  
11 in connection with any corporate events. Again, as I  
12 said before, I'm not a corporate attorney and I'm not  
13 very familiar with those corporate events. I'm not  
14 aware of any physical transfer of material in  
15 connection with that.

16 Q. Have you ever asked American Tobacco whether,  
17 prior to December of 1994, its documents had ever  
18 been transferred to any other corporate subsidiary or  
19 parent corporation?

20 A. Now this is an example of a question where  
21 you've asked me if I've ever asked American Tobacco,  
22 yet you told me you're asking your questions as if I  
23 am American Tobacco, so I don't really understand  
24 your question given the preface you've given me. Are  
25 you asking me whether I ever talked to anyone at

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1 American Tobacco?

2 Q. Yeah, I am.

3 A. Okay. So this is an exception to what you were  
4 talking about before.

5 Q. Well you aren't answering my question.

6 A. Well I'm trying to understand.

7 Q. Well okay. Does American Tobacco --

8 It's your understanding, sitting here as the  
9 corporate history of American Tobacco, and you know  
10 this absolutely, that American Tobacco has never  
11 transferred original documents to American Brands or  
12 any other corporate subsidiary or parent  
13 corporation.

14 MS. YELENICK: Objection to form.

15 MR. O'FALLON: I'll try it again.

16 Q. Has The American Tobacco Company, prior to  
17 December of 1994, ever transferred original documents  
18 which it has not retained a copy of to either a  
19 corporate parent or a corporate subsidiary regarding  
20 smoking and health?

21 A. I am not aware of any physical transfer of the  
22 nature you have described. I am not aware of any.

23 Q. Do you mean that American Tobacco Corporation is  
24 not aware of it, or do you mean that you, Larry  
25 Savell, are not aware of it?

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1 A. I personally am not aware of it, and to the  
2 extent that I -- I'm familiar with American Tobacco  
3 Company matters, I'm not aware of it.

4 Again, I'm here in response to a -- a notice of  
5 taking deposition and we're talking about a lot of  
6 matters which seem to be extraneous to that.

7 Q. But you, Larry Savell, have never made that  
8 inquiry as to whether documents have physically been  
9 transferred from The American Tobacco Company to any  
10 of its corporate subsidiaries or parents; correct?

11 MS. YELENICK: Objection, mischaracterizing  
12 the testimony.

13 THE WITNESS: I -- could you repeat  
14 question, please.

15 (Record read by the court reporter.)

16 A. I personally have never made that inquiry and  
17 I'm not aware that ever having taken place.

18 Q. When you say that, are you talking about that  
19 inquiry?

20 A. Such transfer.

21 Q. Okay. What I would next like to talk about is  
22 the physical location of documents at The American  
23 Tobacco Company at the time this case was sued out in  
24 August of 1994, and to do that I'm going to provide  
25 you some documents that I have previously designated,

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1 which are organizational charts.

2 MR. O'FALLON: Can we go off the record for  
3 a sec?

4 THE REPORTER: Off the record, please.

5 (Recess taken.)

6 (Plaintiffs' Exhibit 29 was marked  
7 for identification.)

8 BY MR. O'FALLON:

9 Q. Mr. Savell, we've had marked as Plaintiffs'  
10 Exhibit No. 29 a document Bates stamp number  
11 ATX05 0058833 through 853. Do you recognize this  
12 document?

13 A. Just take a quick look at it.

14 I believe the page range you have indicated are  
15 pages we produced in this litigation.

16 Q. And are these organizational charts, sir?

17 A. Well the first page of the stapled pile of pages  
18 you have given me says "Organizational Charts," and  
19 they appear to be what would be considered  
20 organizational charts.

21 Q. Can you tell me whether this is a complete  
22 organizational chart for American Tobacco Company as  
23 of the date of the documents, 1991?

24 A. Well I don't understand your question. The  
25 document you've shown me bears a number of different

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1 dates.

2 Q. Well I guess one of the dates I saw was 1991,  
3 and various times in 1991. My question is: At about  
4 the time of 1991, is it your understanding that this  
5 is a complete organizational chart of The American  
6 Tobacco Company?

7 A. I don't know.

8 MS. YELENICK: Objection to form.

9 Q. Who would know that?

10 A. I honestly don't know.

11 Q. No employee at American Tobacco that you can  
12 think of that could tell me whether or not this is a  
13 complete organizational chart?

14 A. I do not know who was involved in preparation of  
15 organizational charts of the company.

16 Q. So your understanding, everybody at the company  
17 would get a copy of the organizational chart?

18 A. I didn't say that.

19 Q. Do you have an understanding?

20 A. All I know is these are pages which were within  
21 American Tobacco Company documents and which we  
22 produced in this litigation.

23 Q. Were these how the pages were kept in the  
24 ordinary course of business?

25 A. I do not know sitting here today whether the

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1 stapled collection of pages you have given me as  
2 Plaintiffs' Exhibit 29 was as they were kept at the  
3 company. I can tell you that we, in the course of  
4 our production in this case, other than the legends  
5 you see on these documents, did not modify the  
6 documents in any way.

7 Q. Did you attempt to collect and produce complete  
8 copies of documents to the extent those documents  
9 existed?

10 A. Certainly.

11 Q. And did you, when making your 4B entries,  
12 reflect complete documents?

13 A. I'm not sure what you mean by "complete." I  
14 mean --

15 Q. Well, for instance, if a document was produced  
16 and appeared to be one complete document, you  
17 certainly didn't take that document and separate it  
18 into individual portions and list it separately on  
19 the 4B index; did you?

20 A. My understanding is the --

21 I'm trying to answer your question in the most  
22 accurate way I can. My understanding is the 4B index  
23 reflected our best knowledge of how the documents  
24 were maintained at the company in terms of being an  
25 entity.

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1 Q. In order to augment your knowledge; that is,  
2 your knowledge at Chadbourne Parke, would you  
3 actually talk to the individual employees who  
4 maintained the files from which you took documents?

5 A. I don't -- I really don't understand your --  
6 your question.

7 Q. Well my question is really pretty simple. I  
8 mean, for instance, with this exhibit, Exhibit 29,  
9 did you ask the person from whose file you took this  
10 document whether this was a complete document before  
11 listing it on a 4B index as one document?

12 MS. YELENICK: Objection to form.

13 A. Well are you indicating to me -- I'm sorry. Are  
14 you representing to me that this was listed as one  
15 document on the 4B index?

16 Q. I believe it was, but I'm using it more as an  
17 example so I can understand it. I have other  
18 documents that were listed in a haphazard fashion.  
19 So at this point I'm just trying to figure out what  
20 steps you took in both collecting the documents and  
21 listing them on your 4B.

22 A. Well let me answer the question this way: To  
23 the extent that the documents existed at the company,  
24 we did not take any steps to modify the way they  
25 existed, and we produced documents reflecting as best

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1 possible we could the way they existed at the  
2 company.

3 Q. I'm asking whether or not you took additional  
4 steps beyond that to contact the people whose  
5 documents those were to make sure that the documents  
6 were complete as maintained?

7 A. All right. What time period are we talking  
8 about now?

9 Q. I'm talking about the Minnesota production, sir.

10 A. Okay. At the time of the Minnesota production,  
11 as you well know, there were no employees of The  
12 American Tobacco Company.

13 Q. Yeah. But those employees didn't die. They  
14 were still in existence; correct?

15 MS. YELENICK: Objection, form.

16 A. I don't know which of them are deceased or are  
17 not deceased.

18 Q. Did you make some inquiry to find that out?

19 A. I have not made an inquiry to determine which  
20 former employees of The American Tobacco Company are  
21 now deceased.

22 Q. For instance, if you took documents out of Mr.  
23 Sprinkle's file, did you contact Mr. Sprinkle and  
24 say, "Mr. Sprinkle, is this a complete -- you know,  
25 we've seen this document, it appears that it may have

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1 some missing pages. Is this a complete copy of the  
2 document?"

3 MS. YELENICK: Objection to form.

4 A. To my knowledge, no such inquiry was necessary.

5 Q. Does that mean no such inquiry was made?

6 A. I'm not aware of any such inquiry because I  
7 don't believe it was necessary.

8 Q. Can you tell me where this document was produced  
9 from, whose file?

10 A. Again, I'm taking your representation that this  
11 was produced as a document.

12 Q. I'm not certain it was.

13 A. Okay. Well then I would ask that your questions  
14 not assume that.

15 Q. Well sir, my purpose isn't to say whether this  
16 document --

17 I mean I wanted to know whether this document  
18 was complete. I believe when I went back and  
19 requested the organizational charts, I did so from  
20 the 4B indices, and made searches on the 4B indices  
21 reflecting that. So I believe that this is complete,  
22 but I can't state that with any certainty because the  
23 fact of the matter is, if this document would have  
24 been listed as four separate documents on a 4B index,  
25 I also conducted searches both ahead of it and back

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1 of it to try to figure out whether, in fact, it was a  
2 document. We've got a document that I'll be more  
3 than happy to show you later on where I actually had  
4 to do all of that, and I'm going to ask you how come  
5 it was produced in a haphazard fashion. But I'm not  
6 trying to nail you on one document because I can  
7 understand how one document can happen. I'm just  
8 trying to ask for your generalized practice. That's  
9 why I'm asking this question, because it's just a  
10 general practice, so that when I read your documents  
11 and I read your 4B, I have some idea of what I'm  
12 looking at. And my people, obviously.

13 A. Okay. Is there a pending question? I'm sorry.

14 Q. Yeah. Well my understanding is that you don't  
15 go back and ask people specifically whether this is  
16 how they were kept or whether -- whether they're  
17 complete. You take them as they were in the file and  
18 make your best guesstimate as to whether they were or  
19 weren't a complete document.

20 MS. YELENICK: Objection to form.

21 A. We produced documents as they exist in the file.

22 Q. So this is how this document existed in the  
23 file, assuming that it correlates to the 4B entry;  
24 correct?

25 A. Again, our practice is to produce documents as

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1 they exist in the company's file. I don't know with  
2 regard to the pages you have shown me what the  
3 situation is, but that would be my best judgment,  
4 is -- is that we produce documents as they existed in  
5 the company's files.

6 Q. I'd like to turn to the first page, the first  
7 substantive page of the document, the second actual  
8 page of the document, and last three Bates numbers,  
9 834.

10 A. Okay.

11 Q. This is an organizational chart for the research  
12 and quality assurance department; correct?

13 A. That's what it says.

14 Q. Where was this department physically located at  
15 American Brands in August of 1994?

16 A. This --

17 Q. Or this -- I'm sorry, there was a misstatement  
18 in my question. Where was this department physically  
19 located at American Tobacco Company in August of  
20 1994?

21 A. The department of research and quality assurance  
22 was located at the company's facilities in Chester,  
23 Virginia.

24 Q. Could you please describe those facilities to  
25 me, just basically the physical facilities?

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1 A. Basically the extent of my knowledge at this  
2 point is -- is --  
3 I honestly can't describe it in any great  
4 detail. It was a -- it was just a facility where --  
5 where -- where R&D work was done.  
6 Q. One building? Two buildings?  
7 A. I honestly don't know the answer to that,  
8 whether it was more than one building or not.  
9 Q. Have you been to Chester, Virginia?  
10 A. Yes, I have.  
11 Q. Have you looked through these facilities?  
12 A. I'm not sure what you mean by "looked through  
13 these facilities."  
14 Q. Have you physically walked around them?  
15 A. I have -- I have -- I have been to the  
16 Chester --  
17 I was at the Chester facility and did walk  
18 around.  
19 Q. Okay. What does the building look like as you  
20 come up to it?  
21 A. I honestly don't remember any -- any precise  
22 details. I believe it was a -- a --  
23 I don't want to speculate. I mean I just -- I  
24 remember it being a building among hundreds of  
25 buildings I have gone to in the course of my -- my

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1 last five or 10 years. I mean, you know, I couldn't  
2 describe this building to you right now.

3 Q. Was it in a compound? Were there buildings from  
4 other companies surrounding it? Was it on a compound  
5 by itself?

6 A. My understanding and my recollection is that at  
7 the company's facilities in Chester, Virginia there  
8 were three different locations. There were the  
9 research -- the company's research and development,  
10 R&QA facility, there was an administrative center,  
11 and I believe there was the Hanmer, H-a-n-m-e-r,  
12 Division, which was involved in manufacturing.

13 Q. The Hanmer Division manufactured reconstituted  
14 tobacco?

15 A. That is my understanding.

16 Q. Were there any animal facilities at the Chester,  
17 Virginia plant; that is, facilities in which lab  
18 animals were maintained?

19 MS. YELENICK: Objection, scope.

20 A. Not to my knowledge.

21 Q. Did you have a chance to physically walk around  
22 the laboratories there at all?

23 MS. YELENICK: Objection.

24 Q. Well that's a valid objection. I didn't ask the  
25 foundational question.

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1           Were there laboratories at the Chester, Virginia  
2 facility?

3                   MS. YELENICK: I have an objection to  
4 scope.

5 A. I'm -- I'm not quite clear what you mean by --  
6 by "laboratories." I mean --

7 Q. Places where scientific equipment are held.  
8 You'd know what scientific equipment is if you saw  
9 it; right?

10 A. I guess in a broad sense. The answer to whether  
11 there were scientific equipment would be -- would be  
12 accurate.

13 Q. Okay. Do you know what kind of testing was done  
14 at that facility?

15                   MS. YELENICK: Objection, scope.

16 A. I -- I would imagine whatever testing is  
17 necessary for a department of research and quality  
18 assurance to perform. And testing, I assume we're  
19 talking about the product.

20 Q. Is that Chester, Virginia facility still in  
21 existence?

22 A. It is not --

23           Trying to formulate the proper answer to this.  
24 I am not aware whether any aspect of it is currently  
25 in operation.

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1 Q. Is that you don't know whether it is or is not?

2 A. I know that the -- the Hanmer Division was  
3 operated for a period of time, but I don't know  
4 whether it is currently operational or not.

5 Q. And as to the other facilities, the R&D and the  
6 administrative center, those may or may not be  
7 operated by Brown & Williamson as we sit here today?

8 A. My understanding is that they are not, to the  
9 best of my knowledge right now. I'm not a hundred  
10 percent sure, but that's to the best of my  
11 understanding.

12 Q. And you think the Hanmer Division may be  
13 operational, but you're not positive.

14 A. I believe it was operational for a time. I  
15 don't know whether it still is operational. And  
16 again, you know, The American Tobacco Company no  
17 longer exists.

18 Q. At some point in time were the documents that  
19 were in the R&D center, the research and quality  
20 assurance center, transferred someplace else?

21 MS. YELENICK: Objection to form.

22 A. I'm not sure what you mean by "the documents"  
23 and -- and "transfer." I mean --

24 Q. You understand that there were documents at the  
25 research and quality assurance facility; correct?

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- 1 A. At -- at any point in time or --
- 2 Q. Well in August of 1994 --
- 3 A. Uh-huh.
- 4 Q. -- there were documents there; correct?
- 5 A. That's correct.
- 6 Q. At some point in time that facility was shut
- 7 down; is that your testimony?
- 8 A. That is correct.
- 9 Q. And some or part of that facility or the
- 10 function of that facility was transferred to Brown &
- 11 Williamson; correct?
- 12 MS. YELENICK: Objection, form.
- 13 A. I'm not clear what the --
- 14 Could you he repeat the question? I'm sorry.
- 15 Q. Sure.
- 16 At some point in time --
- 17 A. Uh-huh.
- 18 Q. -- that facility, the ownership of that facility
- 19 was given to Brown & Williamson; correct?
- 20 A. That's correct.
- 21 Q. Now there were certain documents in existence in
- 22 that facility in August of 1994; correct?
- 23 A. That is true.
- 24 Q. What happened to those documents?
- 25 A. The documents at the --

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1 Q. Let's just talk about the R& -- I'm sorry.

2 Let's just talk about the quality assurance  
3 department for right now.

4 A. Okay. Could you -- I'm sorry. Could you repeat  
5 your question?

6 Q. Sure. What happened to the research and  
7 quality assurance documents after August of 1994?

8 A. I'm not sure what you mean by "after August of  
9 1994."

10 Q. Well there was a sale after August of 1994 --

11 A. That's correct.

12 Q. -- and the facility was shut down sometime in  
13 August of 1994, after August of 1994. So what  
14 happened to the documents that were in existence as  
15 of August of 1994 subsequently?

16 A. The documents that existed at the department of  
17 research and quality assurance at the time of the  
18 sale were reviewed.

19 Q. When were they reviewed?

20 A. They were reviewed shortly after the sale.

21 Q. Okay. Now I need to clarify what dates you're  
22 using when you say "the sale." What dates are you  
23 using? Because I understand there's two dates,  
24 there's a sale date and then there's the actual  
25 merger date, I think, pending some regulatory

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1 requirements. So what date are you talking about?

2 A. I mean whatever date is subsumed within your  
3 question. The date of the sale, I believe, was in  
4 December of 1994.

5 Q. So at some point prior to December of 1994, the  
6 documents in the R&D facility were reviewed; correct?

7 A. Not prior.

8 Q. Okay. After December of 1994?

9 A. That's my understanding.

10 Q. Were those documents reviewed at any time prior  
11 to the sale? And when I'm talking here -- well no,  
12 at any time prior to the sale in December of 1994 by  
13 anyone?

14 A. In December of 1994 were they reviewed?

15 Q. Before December of 1994.

16 MS. YELENICK: Objection, beyond the scope.

17 A. By?

18 Q. By anyone.

19 A. By anyone.

20 To the extent that any documents at any of  
21 American Tobacco's facilities were called for by  
22 document requests, those documents would have been  
23 reviewed.

24 Q. Okay. Is it your understanding that the  
25 documents at the R&D location in Chester, Virginia

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1 had been reviewed prior to December of 1994 for  
2 previous litigation?

3 A. It is my understanding that prior to December  
4 1994, to the extent that materials would be called  
5 for by pending document requests in a given case,  
6 that documents regarding those matters, regardless of  
7 where at The American Tobacco's facilities they were,  
8 would have been reviewed.

9 Q. And were documents in the R&D facility part of  
10 those documents? Were there documents there that had  
11 been reviewed previously?

12 A. I believe that is the case. I can't talk about  
13 this particular document.

14 Q. Was there any review of those documents  
15 undertaken as part of Brown & Williamson's due  
16 diligence?

17 A. I'm not sure what you mean by "due diligence."

18 Q. Do you understand what happens usually in the  
19 typical corporate sale of assets?

20 A. Not really. Again, I'm not a corporate lawyer.

21 Q. Typically what happens, and I believe there's  
22 been some testimony in the Brown & Williamson  
23 deposition, that a due diligence is undertaken; that  
24 is, accountants or whoever Brown & Williamson deems  
25 desirable or required will come in and actually look

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1 physically at the company's documents before  
2 completing the sale.

3 A. I -- I am not aware of anything like that.

4 Q. So as far as your --

5 As far as you know, B&W didn't do any due -- due  
6 diligence review of documents at the research center;  
7 correct?

8 A. That's not what I said. I am not personally  
9 aware of any activities that Brown & Williamson would  
10 have taken along those regards.

11 Q. Okay. But you understand that American Tobacco  
12 would have been well aware that somebody from the  
13 outside is coming in to look at its documents; right?

14 A. I have no knowledge about those matters.

15 Q. So you as a representative of The American  
16 Tobacco Company can't tell me whether or not Brown &  
17 Williamson in fact did a -- did a due diligence  
18 review of the R&D documents; correct?

19 MS. YELENICK: That's beyond the scope.

20 A. I don't know --

21 I have no knowledge with regard to that. If  
22 anyone on behalf of Brown & Williamson has said that  
23 that took place, then I have no reason to believe  
24 that that is not the case.

25 Q. Okay. You said after the sale a review of the

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1 documents in the R&D department at Chester, Virginia  
2 was undertaken; correct?

3 A. That's correct.

4 Q. Who undertook that review?

5 A. The review was undertaken by attorneys and  
6 persons working at the attorneys' direction.

7 Q. Okay. What attorneys?

8 MS. YELENICK: Objection, instruct you not  
9 to answer.

10 MR. O'FALLON: So again you're not going to  
11 tell me what attorneys went in there to look at  
12 documents.

13 MS. YELENICK: That's correct.

14 MR. O'FALLON: You think that in some way  
15 that invokes the attorney opinion part of work  
16 product?

17 MS. YELENICK: Counsel, my objection speaks  
18 for itself.

19 MR. O'FALLON: Just trying to clarify it.  
20 When we argue this motion before the court, I guess I  
21 just want to understand exactly why you think that's  
22 work product, that fact.

23 MS. YELENICK: Objection stands, counsel.

24 BY MR. O'FALLON:

25 Q. Do you know whether American Tobacco kept a list

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1 of the attorneys that came in to look at documents at  
2 the R&D facility?

3 A. I don't know.

4 Q. Do you --

5 Did the R&D facility have a sign-in sheet when  
6 you had to come into the facility, that you needed to  
7 sign in?

8 A. When?

9 Q. During the time that the document review was  
10 conducted after December of 1994.

11 A. I'm trying to remember if there was or was not a  
12 sign-in sheet. I know there were very strict  
13 security measures in place.

14 Specifically on the issue of a sign-in sheet, I  
15 don't know. It may well be that there was one, but I  
16 don't know for a fact.

17 Q. Were you required to notify American Tobacco  
18 precisely what individuals would be coming to visit  
19 their facilities on any given day?

20 A. When you say "you," you're now talking about me  
21 personally?

22 Q. I'm talking about you, Larry Savell.

23 A. I was not required to -- to do that. I don't  
24 know whether others did that. I would suspect they  
25 might have.

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1 Q. Okay. So it's entirely possible that attorneys  
2 for Chadbourne & Parke had to tell American Tobacco  
3 in advance who was coming in to look at their  
4 documents; correct?

5 MS. YELENICK: Objection, speculation.

6 A. Again I -- I don't -- I don't want to speculate  
7 on that.

8 Q. Okay. And you physically have been at the  
9 Chester, Virginia plant.

10 A. Yes, that was my testimony.

11 Q. And did you have to physically sign in when you  
12 arrived?

13 A. I don't recall specifically whether I had to  
14 sign in. As I indicated previously, at that time  
15 there were very significant security measures in  
16 place. There may have been a sign-in sheet, but I  
17 don't remember specifically whether there was or not.

18 Q. When you say "significant security measures,"  
19 what do you mean? Describe them.

20 A. My recollection is there were guards on the  
21 premises; that, as I recall, people's bags had to be  
22 searched to make sure that nothing was being  
23 removed. Whatever steps were necessary to assure  
24 that materials were being maintained were taken.

25 Q. Well, you know, it doesn't help for you to make

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1 those kind of broad statements.

2 A. That's my understanding.

3 Q. I needs facts. I need facts.

4 You talked about guards, you talked about  
5 searches being made of handbags. Anything else?

6 A. Uh-huh.

7 Q. Was there electronic surveillance?

8 A. I don't know for a fact whether there was or  
9 there was not. I mean the nature of electric  
10 surveillance, to some degree it's not obvious. You  
11 know, I -- I believe there were a number of measures  
12 in place. The ones I've identified to you are the  
13 ones I remember most clearly. Obviously, you know,  
14 you had to have, as I recall, identification passes  
15 or some approval to get onto the -- the premises.

16 A number of security measures were in place, the  
17 goal being to prevent anybody from removing anything.

18 Q. So you had to be given an identification pass;  
19 correct?

20 A. That is my recollection.

21 Q. So somewhere there ought to be a record as to  
22 who's been given identification passes; correct?

23 MS. YELENICK: Objection, form.

24 A. I mean record maintained by whom?

25 Q. American Tobacco Company, the company you're

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1 speaking for here today.

2 A. Well bear in mind that The American Tobacco

3 Company has ceased to exist.

4 Q. Are you saying that those documents then ceased  
5 to exist?

6 A. No, I did not say that at all.

7 MS. YELENICK: Objection.

8 Q. So my point is, fairly tight security measures  
9 were taken, correct?

10 A. Tight security measures were taken.

11 Q. And somewhere there should be documentation  
12 about who visited that plan when.

13 MS. YELENICK: Objection, speculation.

14 A. I don't know what documents were or were not  
15 created at that time.

16 Q. But The American Tobacco Company would; wouldn't  
17 they?

18 MS. YELENICK: Objection.

19 A. I -- I don't know that.

20 Q. But The American Tobacco Company would know  
21 that; right?

22 A. I --

23 Q. Does that mean The American Tobacco Company does  
24 not know it, or you, Larry Savell, do not know it?

25 A. Your questions have been premised on following

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1 the sale. Following the sale these were -- I mean  
2 they were no longer American Tobacco Company  
3 facilities. I'm not sure --

4 I'm not following your question.

5 Q. Okay. Well then let me go back. Is it --

6 Are you telling me that prior to the sale to  
7 Brown & Williamson, knowing that litigation was  
8 pending, knowing that there was a  
9 retention-of-documents order, that no one on behalf  
10 of The American Tobacco Company went through and made  
11 sure that all documents were retained?

12 MS. YELENICK: Objection, mischaracterizing  
13 testimony.

14 A. That's not --

15 I mean I've testified at length earlier today on  
16 how orders such as the Castano order, that they were  
17 disseminated and that they were implemented. Your --  
18 your question assume facts --

19 Q. But you wanted to talk about the ending of the  
20 question, and that's what I'm trying to try to talk  
21 about. I want to know what happened when this  
22 company was transferred from one to the other.

23 Now it's my understanding that no document  
24 review was conducted at this company or the  
25 facilities of The American Tobacco Company prior to

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1 the sale.

2 A. That's not what I testified to.

3 MS. YELENICK: Objection,

4 mischaracterizing.

5 Q. Okay. Okay. So there was a document production

6 that took place prior to the sale that had to do with

7 Minnesota.

8 MS. YELENICK: Objection to form.

9 A. I don't think I said that either.

10 Q. Well I'm asking you --

11 A. We're confusing all kinds of --

12 Q. -- the question, sir.

13 A. All right.

14 Q. I'm asking the question.

15 A. I think we're confusing a variety of things.

16 Q. Well one of us is.

17 A. Well I mean, unless my recollection is mistaken,

18 there were no discovery requests in this case served

19 until well into 1995. I believe it was -- it may

20 have been -- it may have been June or July. I mean

21 is -- is your recollection different than that?

22 Q. No, it's not different than that.

23 A. Okay.

24 Q. But you understand that when you're sued in a

25 case like this, you have certain obligations about

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1 retaining documents; correct?

2 A. Company has complied with all of its  
3 obligations.

4 Q. And the company was under a specific document-  
5 retention order in the Castano case at the time of  
6 the sale; correct?

7 A. And as I testified, we complied with that.

8 Q. Well yeah. But you don't have any specifics,  
9 and that's what I'm going to try to get into now, is  
10 the specifics of how exactly that document retention  
11 and transfer was done. Okay? So that's what we're  
12 going to be talking about.

13 Now what law firms undertook this document  
14 review at the Chester, Virginia location after  
15 December of 1994?

16 A. It's my understanding that Chadbourne & Parke  
17 was involved in that.

18 Q. Any others?

19 A. My understanding is that King & Spalding was  
20 involved in that.

21 Q. Any others?

22 A. Trying to think.

23 With regard to that particular facility, I'm --  
24 I'm not sure that any other law firms were involved.

25 Q. Was Leonard, Street & Deinard involved in that

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1 particular review?

2 A. Not to my knowledge, in terms of physically  
3 being there.

4 Q. When did this review you're talking about take  
5 place at the Chester, Virginia facility?

6 A. My understanding is that the review subsequent  
7 to the sale was conducted shortly after the sale.

8 Q. And how long did that review take? In other  
9 words, I'm trying to get a timeframe.

10 A. Uh-huh. I -- I honestly don't remember  
11 precisely. I believe that steps were taken in  
12 January and February of -- of 1995.

13 Q. Were all the documents at the Chester, Virginia  
14 facility reviewed at that time?

15 A. In January and February of --

16 Q. Right.

17 A. Again, I don't know precisely whether the review  
18 began and when it precisely ended. My understanding  
19 is that the company's files existing at that location  
20 were reviewed in that -- in that timeframe.

21 Q. And what was physically done with the documents  
22 from that facility?

23 A. They were reviewed.

24 Q. Well I know they were reviewed, but ultimately  
25 where did all the documents from that facility go?

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1 A. When precisely?

2 Q. Any time after that.

3 Are they still in existence in Chester,  
4 Virginia? If I drive to Chester, Virginia today and  
5 go to what was The American Tobacco Company facility,  
6 will I find those documents, all of them?

7 A. No.

8 Q. Okay. Where are those documents as we sit here  
9 today?

10 A. My understanding is that certain of the  
11 documents were retained by Brown & Williamson  
12 personnel and are either maintained at that facility,  
13 if it is indeed still in operation -- again I'm not  
14 sure about that -- or are maintained at other  
15 facilities.

16 Q. Do you know what other facilities?

17 A. I believe that documents relating to production  
18 matters would be maintained at production facilities  
19 of Brown & Williamson.

20 Q. And when you say "production matters," what  
21 you're talking about is the physical production of  
22 cigarettes; right?

23 A. That's my understanding.

24 Q. Manufacturing, so to speak.

25 A. That's my understanding.

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1 Q. Okay. And what about the non-production  
2 documents?

3 A. Well my understanding, just to speak a little  
4 more generally, is that those documents necessary to  
5 continue the business were retained by Brown &  
6 Williamson personnel, and whenever they needed to --  
7 wherever they needed to use those documents, then  
8 those documents would have been maintained at  
9 whatever location that was.

10 Q. Okay. What about any other documents?

11 A. Documents which related to any materials which  
12 needed to be retained were retained and are now in a  
13 warehouse or in Chadbourne's offices.

14 Q. Okay. And who decided what needed to be  
15 retained and what didn't need to be retained?

16 A. Attorneys.

17 Q. What was done with documents that either weren't  
18 shipped to Brown & Williamson or weren't determined  
19 to be necessary to retain, what were done with those  
20 documents?

21 A. Documents which were not retained by Brown &  
22 Williamson and were not determined to be responsive  
23 to any pending requests, to any obligation of the  
24 company, be it through court order or whatever, for  
25 any business purpose that was required to be kept,

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1 for any litigation purpose, broadly defined, those  
2 documents which under no reading of any obligation of  
3 the company to maintain them under any authority,  
4 those documents were not retained.

5 Q. What was done with them?

6 A. Those documents which met the criteria that I've  
7 described were destroyed.

8 Q. And was a listing made of those documents prior  
9 to their destruction?

10 A. That may be work product.

11 Q. The fact of the list is what I'm asking for.  
12 Was a list done?

13 MS. YELENICK: You can answer that  
14 question.

15 A. I believe that a list of materials that were  
16 retained -- that were not retained -- I'm sorry.

17 Could you repeat your question?

18 Q. Certainly.

19 Was a list of the materials not retained made  
20 prior to destruction?

21 A. I believe a list reflecting materials that were  
22 not maintained was made.

23 Q. Has that list been produced?

24 A. Where?

25 Q. In Minnesota.

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1 A. To my knowledge it has not been.

2 Q. Is that list listed on a privilege log anywhere?

3 A. To my knowledge it has not been listed on our  
4 privilege log to date.

5 Q. Is that document in the pipeline for privilege  
6 review?

7 A. Sitting here today, I do not know the answer to  
8 that question.

9 Q. Where physically is that document at?

10 A. Well you're assuming it's one document.

11 Q. Is it more than one document?

12 A. It may be. I -- I don't know for a fact if it's  
13 one or more.

14 I believe that the list or lists you are talking  
15 about is maintained at Chadbourne & Parke.

16 Q. And a list of all the files retained by  
17 Chadbourne & Parke from the Chester, Virginia R&D  
18 facility, was that list also made?

19 MS. YELENICK: Objection to form.

20 Q. Was a list also made of all documents retained  
21 by Chadbourne & Parke from the Chester, Virginia R&D  
22 facility?

23 MS. YELENICK: Objection, retained by  
24 Chadbourne & Parke?

25 Q. I believe the testimony was that certain

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1 documents were passed on to B&W and that certain  
2 documents were retained by Chadbourne & Parke.  
3 A. Certain documents currently exist at Chadbourne  
4 & Parke.

5 Q. Okay. They were retained on behalf --  
6 They were retained for the purposes of this  
7 litigation from The American Tobacco Company files;  
8 correct?

9 A. Well they were retained in connection with the  
10 procedures we've just -- we just talked about.

11 Q. Right. And that's the procedures I'm  
12 addressing. I don't know why we're into this  
13 semantic game here.

14 A. Could you please repeat --

15 Q. What I'm asking for --

16 As I understand it, there's three categories of  
17 documents. And correct me if I'm wrong. There's  
18 those documents that were destroyed, there's those  
19 documents retained by Chadbourne & Parke, and there  
20 are those documents retained by B&W.

21 A. That's right.

22 Q. Was there a listing made of those documents  
23 retained by Chadbourne & Parke?

24 A. There is a listing reflecting the documents, but  
25 not to that level of detail.

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1 Q. What level of detail do you go to? And again,  
2 I'm just asking for objective information.

3 A. We're talking about the documents that were  
4 retained --

5 Q. By Chadbourne & Parke; correct?

6 A. I believe there is a -- well, I'm --

7 I'm concerned that some of this may cross into  
8 work product.

9 Q. Again I'm just asking for objective  
10 information. I'm not asking for any attorney work  
11 product.

12 A. No, but objective information can be  
13 privileged --

14 Q. Okay.

15 A. -- depending on what the information is.

16 Q. Well let me just break it down and maybe this  
17 will help you refresh your recollection.

18 Were the documents stored in boxes?

19 A. Yes.

20 Q. Did the boxes have some notation on them as to  
21 where the files came from; in other words, you know,  
22 X's office, Y's office, G department?

23 MS. YELENICK: Objection, that is work  
24 product.

25 Q. American Tobacco would certainly know that

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1 information; right?

2 A. American Tobacco doesn't exist.

3 Q. Well is that going to be your answer to all  
4 these questions, that since American Tobacco doesn't  
5 exist, that the sum total of American Tobacco's  
6 knowledge sits solely in the minds of American  
7 Tobacco's attorneys and all that information is going  
8 to be protected by work product? Because if so, I  
9 need to know that.

10 MS. YELENICK: Counsel, your question was  
11 "retained by Chadbourne."

12 MR. O'FALLON: Absolutely.

13 MS. YELENICK: Okay.

14 Q. But they were collected from The American  
15 Tobacco facility; correct?

16 A. I'm sorry, that was --

17 Q. They were collected from the American Tobacco  
18 facility; right?

19 A. The American --

20 The documents that Chadbourne & Parke retains  
21 were obtained from American Tobacco facilities,  
22 correct.

23 Q. And those boxes, as they were being parceled up  
24 to these various -- I don't want call them piles, but  
25 these various locations they were going to be at,

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1 some identifiers were put on them as to where they  
2 were from; correct?

3 MS. YELENICK: By whom?

4 MR. O'FALLON: By whoever was collecting  
5 the documents.

6 A. By anyone?

7 Q. Sure.

8 MS. YELENICK: That's work product.

9 MR. O'FALLON: So you're -- so you're going  
10 to take the position that the physical location of  
11 documents at American Tobacco's facility prior to the  
12 time that B&W took possession of that facility is  
13 work product.

14 MS. YELENICK: Objection, mischaracterizing  
15 his testimony.

16 MR. O'FALLON: Well I'm -- I'm really  
17 trying to characterize your objection. You're the  
18 one's telling him not to answer. So --

19 MS. YELENICK: If I can respond  
20 directly, --

21 MR. O'FALLON: Well then -- then respond.

22 MS. YELENICK: -- my objection relates to  
23 your question about the marking on the box.

24 MR. O'FALLON: The physical act of marking  
25 the box, or the information that then exists on the

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1 box once it's marked?

2 MS. YELENICK: The entity which put the  
3 information on the box.

4 MR. O'FALLON: Are you saying that there is  
5 some special lawyer-like function that goes into  
6 physically marking on a box a location of a file,  
7 physical location of a file?

8 MS. YELENICK: That area is encompassed by  
9 work product, yes.

10 MR. O'FALLON: It is.

11 MS. YELENICK: Yes. Yes.

12 MR. O'FALLON: There's some attorney  
13 opinion that goes into all of that?

14 MS. YELENICK: Talking about work product,  
15 counsel.

16 MR. O'FALLON: There's something that no  
17 one coming in off the street couldn't figure out by  
18 themselves?

19 MS. YELENICK: The objection stands,  
20 counsel.

21 MR. O'FALLON: Just curious as to how --

22 MS. YELENICK: Reframe your question.

23 MR. O'FALLON: I'm just curious as to how  
24 you're going to present this to the court.

25 BY MR. O'FALLON:

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1 Q. What does the listing maintained by Chadbourne &  
2 Parke of the documents retained by Chadbourne & Parke  
3 contain concerning physical objective information  
4 about the documents?

5 MS. YELENICK: Work product. Instruct you  
6 not to answer.

7 Q. Do you put file flames -- do you --  
8 Is there a reflection of the file names that are  
9 retained by Chadbourne & Parke?

10 MS. YELENICK: You can answer that  
11 question.

12 A. Could you repeat it, please?

13 Q. Sure.

14 You've testified that certain of the ATC  
15 documents from the Chester, Virginia plant were  
16 retained by Chadbourne & Parke, and you've testified  
17 that there has been a listing of some type --

18 A. Uh-huh.

19 Q. -- made of those documents. Does that listing  
20 include the file name?

21 A. I am concerned that the content of any lists  
22 created by attorneys is work product.

23 Q. Are you refusing to answer, sir?

24 MS. YELENICK: If you're concerned, I  
25 instruct you not to answer.

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1 THE WITNESS: I am concerned about that.

2 MR. O'FALLON: Okay. So the only way I'm  
3 going to get that objective information is to go to  
4 the judge and ask for that to be produced. Is that  
5 your basic stance here?

6 MS. YELENICK: Objection, counsel.

7 MR. O'FALLON: I just want to be clear. I  
8 mean if he's not going to answer the question, I  
9 either have to compel him to answer or I have to  
10 physically get the list.

11 A. I am concerned, as any attorney would be, about  
12 disclosing privileged information.

13 Q. Well we might as well get this all out, because  
14 I'm -- we'll present it all to the court in one fell  
15 swoop. There's no reason in holding back here.

16 A. You can make whatever threats you want.

17 Q. It's not a threat, sir.

18 A. I'm just telling you.

19 Q. It's absolutely not a threat. If we have to go  
20 to it, we'll go to it. I just want to have a  
21 complete record so we have a complete record when we  
22 go. And it's --

23 It's your position as an attorney for American  
24 Tobacco that the objective information contained on  
25 the list made by Chadbourne Parke of documents

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1 retained by Chadbourne Parke on behalf of American  
2 Tobacco for production in litigation potentially is  
3 covered by the work-product privilege.

4 MS. YELENICK: Mischaracterization of the  
5 objection. The objection stands.

6 MR. O'FALLON: There's a question pending.

7 THE WITNESS: Do you instruct me not to  
8 answer?

9 MS. YELENICK: Yes.

10 THE WITNESS: Okay.

11 Q. Where is that list located?

12 MS. YELENICK: Objection.

13 Q. The Chadbourne & Parke list or lists.

14 THE WITNESS: Can I answer that?

15 MS. YELENICK: Yes.

16 A. At Chadbourne & Parke.

17 Q. Who has access to that list?

18 A. Chadbourne & Parke attorneys.

19 Q. How about attorneys for Leonard, Street &  
20 Deinard?

21 A. I would imagine they do.

22 Q. You don't know?

23 A. I assume they do. Yeah, that's --

24 Q. Was there also a list made of documents sent to  
25 Brown & Williamson?

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1 A. Not to my knowledge.

2 Q. Now you said this review process was done with  
3 King & Spalding; correct?

4 A. They were involved.

5 Q. At the time King & Spalding did not represent  
6 American Tobacco Company; correct?

7 A. That's my understanding.

8 Q. They would have been there as representatives of  
9 B&W; correct?

10 MS. YELENICK: May call for a legal --  
11 legal conclusion, counsel.

12 MR. O'FALLON: Calls for a fact. They  
13 either were or they weren't.

14 MS. YELENICK: Well --

15 Q. Okay. Well let's just clarify.

16 As far as you know, King & Spalding was not  
17 representing The American Tobacco Company during this  
18 document review.

19 A. This document review occurred after the sale.  
20 It's my understanding that King & Spalding was there  
21 on behalf of -- of a client.

22 Q. And that client was not American Tobacco;  
23 correct?

24 MS. YELENICK: Objection.

25 A. I -- I don't know the nature of their

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1 representation specifically at that point in time.

2 That was a point in time prior to the merger.

3 Q. And you can't tell me whether they were

4 representing American Tobacco Company or not at that

5 point in time.

6 A. I -- I cannot -- I cannot comment on what

7 another law firm was doing.

8 Q. Wouldn't you want to have that all clarified,

9 though, before you went in, to make sure you retained

10 whatever privilege that you need to assert? Wouldn't

11 you --

12 MS. YELENICK: Objection.

13 Q. -- want to be sure that you knew who that law

14 firm was representing when they were undertaking a

15 review of your client's documents?

16 A. You're asking me for a legal conclusion?

17 Q. No. I'm asking you whether that's something you

18 would want to know.

19 MS. YELENICK: Objection, argumentative.

20 Q. How about you as American Tobacco, would you

21 want to make sure that only your attorneys were

22 looking at your documents?

23 A. My understanding is that King & Spalding was

24 involved in this process in connection with their

25 representation of a client, and that all applicable

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1 privileges involved in this process to any degree  
2 were maintained at all times.

3 Q. What client?

4 A. I believe -- I mean I don't --

5 THE WITNESS: Can I answer that question?

6 MS. YELENICK: Objection as -- as to  
7 vagueness.

8 Want to repeat the question, counsel?

9 MR. O'FALLON: I don't think vagueness  
10 requires you not to answer, so --

11 A. Could you repeat the question?

12 MS. YELENICK: If it's not understandable.

13 Q. Yeah. What client?

14 MS. YELENICK: What client what?

15 Q. It's a two-word question. What client was King  
16 & Spalding representing?

17 THE WITNESS: Can I answer that question?

18 MS. YELENICK: To the extent you know, yes.

19 A. I don't know specifically. My understanding  
20 would be they represented Brown & Williamson which  
21 had purchased The American Tobacco Company.

22 Q. Did King & Spalding have access to the list of  
23 documents that you created for retention at  
24 Chadbourne Parke?

25 A. I'm not clear on your question. You're asking

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1 if King & Spalding at that time had access to the  
2 list maintained at Chadbourne?

3 Q. The --

4 Well I assume the list was generated in part at  
5 the Chester, Virginia plant, but if that's not true,  
6 then say so.

7 MS. YELENICK: Counsel, that may call for a  
8 legal conclusion.

9 MR. O'FALLON: I don't see anything legal  
10 about it.

11 MS. YELENICK: Sure.

12 A. I'm sorry. Could you repeat the question?

13 Q. Certainly.

14 Did King & Spalding have access to that list  
15 that Chadbourne Parke created of documents retained  
16 by Chadbourne Parke?

17 MS. YELENICK: Same objection.

18 THE WITNESS: Can I answer that question?

19 MS. YELENICK: Yes.

20 A. My understanding is that King & Spalding was  
21 involved in the creation of any such list.

22 Q. So they were able to see the information  
23 contained in that list; correct?

24 A. Again, I don't know when precisely whatever list  
25 you're referring to was or was not created. They

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1 were involved in the process of -- of reviewing the  
2 documents with us.

3 Q. Let's just be real clear about this.

4 A. Sure.

5 Q. You created the list; didn't you?

6 A. Me personally?

7 Q. Your law firm created the list.

8 A. We kept --

9 We maintained a record of -- of what we found.

10 Q. You created the list; correct?

11 A. That -- that's --

12 That's me now as Chadbourne & Parke.

13 Q. Right.

14 A. We -- we maintained --

15 MS. YELENICK: Objection to form.

16 A. Chadbourne & Parke maintained a record of -- of  
17 the materials that were being retained.

18 Q. You made the list; correct?

19 MS. YELENICK: Objection to form.

20 A. I just answered the question.

21 Q. You certainly know when the list was made; don't  
22 you?

23 A. I don't remember specifically when the list was  
24 made. I know that records were maintained of -- of  
25 what was done.

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1 Q. If you wouldn't know, who would?

2 A. I'm not saying I don't know something. I'm

3 saying that records were main -- record --

4 At the time the work was done, a -- a record

5 was -- was created of the work that was done.

6 Q. When was the list finalized for the Chester,

7 Virginia facility?

8 A. Whenever the -- the review was complete.

9 Q. When was that?

10 A. I don't remember specifically when it was.

11 Q. Approximately.

12 A. I believe this was early in 1995 that the review

13 was -- was complete and -- and -- and a record of the

14 results of the review was maintained.

15 Q. You -- you act like this -- like this -- you're

16 guessing about everything. You were the person

17 responsible for doing this; weren't you?

18 A. I'm not -- I'm not --

19 MS. YELENICK: Objection to form.

20 A. I'm not guessing. I am trying to avoid any

21 speculation whatsoever.

22 Q. You're hedging every -- every answer you give,

23 sir.

24 A. All I'm trying to do is give you --

25 MS. YELENICK: Objection to form.

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1 A. All I'm trying to do is give you the most  
2 accurate information I have. I don't want to  
3 speculate and say something which is incorrect. I am  
4 trying to tell you, to the best of the information  
5 that I have, that at the time of this review, records  
6 of the result of the review were created and  
7 maintained.

8 Q. So approximately at or about or around February  
9 of 1995, a list of the documents retained by  
10 Chadbourne Parke was in existence.

11 A. Now you're talking about a list of the  
12 documents.

13 Q. Okay. You know, again, we can do this the easy  
14 way or the hard way.

15 A. I'm trying to be accurate.

16 Q. But if you want to do it the hard way, we can do  
17 it the hard way. That's fine.

18 Here we go: On or around February of 1995, a  
19 list of the documents retained by Chadbourne & Parke  
20 from The American Tobacco Company files in the  
21 Chester, Virginia facility was in existence;  
22 correct?

23 MS. YELENICK: Objection to form.

24 A. A record of materials retained was maintained.  
25 You're -- you're talking about a list of documents.

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1 I am not aware of the existence of a list of  
2 documents as such.

3 Q. Okay. Your words are "records of materials  
4 retained." Define what you mean by "records of  
5 materials retained."

6 A. I'm talking about a record of materials that  
7 were retained as opposed to a document-by-document  
8 list.

9 Q. And how was that records of materials maintained  
10 constructed? What kind of information was reflected  
11 about the records maintained?

12 MS. YELENICK: Again, this may get into  
13 work product.

14 A. That's my --

15 MS. YELENICK: If you want to reframe your  
16 question.

17 MR. O'FALLON: No, I don't.

18 A. My concern is that it does get into work  
19 product.

20 Q. Well --

21 MS. YELENICK: Question as framed is  
22 objectionable.

23 Q. -- give me something that doesn't involve work  
24 product. Give me what you can about that list that  
25 you don't believe involves work product, and we'll

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1 proceed from there.

2 MS. YELENICK: Counsel, that's not the  
3 right way of proceeding. Objection.

4 MR. O'FALLON: Well you want to show me the  
5 rule that says that's not the right way of  
6 proceeding?

7 MS. YELENICK: Objection to form.

8 MR. O'FALLON: You want to show me the case  
9 law that says that's not the right way?

10 MS. YELENICK: Objection.

11 MR. O'FALLON: Do you have a case that says  
12 that, ma'am?

13 MS. YELENICK: Objection to form, counsel.

14 MR. O'FALLON: Okay. Answer.

15 THE WITNESS: Okay. Would you repeat the  
16 question, please?

17 MR. O'FALLON: At some point I'm putting  
18 you under oath. You're answering as much as he is at  
19 this point.

20 (Record read by the court reporter.)

21 MS. YELENICK: Objection, work product.

22 BY MR. O'FALLON:

23 Q. Give me all non-work-product-protected material  
24 contained in that records of materials retained.

25 MS. YELENICK: Objection. Assuming there

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1 is any non-work-product component.

2 MR. O'FALLON: Ma'am, objection requires  
3 you to state your objection, and then if you've got a  
4 privilege objection, you just tell him not to  
5 answer. I don't need a speaking objection. If you  
6 want to talk and testify, I'm more than happy to put  
7 you under oath and we can take your deposition.  
8 Okay?

9 MS. YELENICK: Objection stands, Dan.

10 MR. O'FALLON: Please answer then.

11 MS. YELENICK: Instruct you not to answer.

12 MR. O'FALLON: Fine.

13 Q. Is it your testimony that there's absolutely no  
14 information on that list that is not protected by  
15 work product?

16 MS. YELENICK: You can answer that  
17 question.

18 A. I --

19 We are talking now about whatever was placed on  
20 the outside of boxes. Is that what we're talking  
21 about?

22 Q. We're talking about --

23 You know, once again you -- you changed the  
24 entire inquiry.

25 A. I'm trying to understand what we're talking

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1 about here.

2 Q. Well I really don't think that's at all

3 confusing.

4 A. It's confusing to me.

5 Q. Well it shouldn't be; I'm using your words. You

6 talked about a records of materials retained.

7 A. Right.

8 Q. You said you wanted to clarify to me that it

9 wasn't a list, that what it was was records of

10 materials retained, your words.

11 A. Right.

12 Q. Okay. Is it your testimony that there was no

13 non-privileged information on that records of

14 materials retained?

15 A. That -- that to me calls for a legal

16 conclusion. You're asking me if there are any

17 non-privileged aspects of this, and doesn't that by

18 its definition call for a legal conclusion?

19 Q. So what's your answer, sir?

20 A. You're now asking me as an attorney to give you

21 a legal opinion on something.

22 Q. Your -- your counsel has instructed you not to

23 answer when I ask you for any information on that

24 that's non-privileged. Okay.

25 What's the date of that document?

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1 MS. YELENICK: Objection, form of the  
2 question.

3 Q. Do you know the date of that document?

4 A. Excuse me?

5 Q. Do you know the date of the records of materials  
6 retained document?

7 A. No, I don't.

8 Q. Do you know who made the document?

9 A. Again you're talking about a document. We are  
10 talking about information regarding materials  
11 retained which may appear on -- on -- on -- on a box.

12 Q. Is there a listing of that information that  
13 appears on a box on some formalized document such as  
14 an index?

15 A. Sitting here today?

16 Q. You sitting here today?

17 A. Are you asking me, as of today, is there such a  
18 list?

19 Q. Sure.

20 MS. YELENICK: Objection, beyond the scope.

21 A. That may be privileged.

22 Q. Whether it exists is now privileged?

23 A. It --

24 Q. Okay. Let me just -- let me just read from the  
25 court's order here. This is the court's order of --

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1 dated March 20th of 1996. Okay? Paragraph 12,  
2 "Directions Not To Answer: Directions to the  
3 Deponent not to answer are improper, except on  
4 grounds of privilege or to enable a party or deponent  
5 to present a motion to the Court for determination of  
6 deposition or protection under Rule 26.03 of the  
7 Minnesota Rules of Civil Procedure. When a privilege  
8 is claimed, the witness shall nevertheless answer  
9 questions relevant to the existence, extent, and  
10 waiver of the privilege, such as the date of the  
11 communication, who made the communication, to whom  
12 and whom -- in whose presence the communication was  
13 made, and the identity of other persons to whom the  
14 contents of the communication have been disclosed and  
15 the general subject matter of the statements, unless  
16 such information is itself privileged." Okay? So  
17 let's go through those one at a time concerning this  
18 records of materials maintained record that  
19 Chadbourne & Parke made of those materials retained  
20 from The American Tobacco Company facility in  
21 Chester, Virginia on or about February of 1995.

22 MS. YELENICK: Counsel, mischaracterizing  
23 the court's order.

24 Q. First of all --

25 A. Just a second. It seems like we're going into a

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1 rather long inquiry right now.

2 Q. Well we are.

3 A. Could we possibly have lunch? I'm getting a

4 little hungry.

5 Q. We can do this whenever you want to do it.

6 A. Well I don't -- I don't --

7 What time do you normally break for lunch at

8 these depositions?

9 Q. I'm fine. Do you want to do privilege later?

10 We can do privilege later.

11 A. Just getting a little hungry, that's all.

12 MR. O'FALLON: Fine. Let's be back here at

13 1:20.

14 MS. YELENICK: Okay.

15 THE REPORTER: Off the record, please.

16 (Luncheon recess taken at 12:21 o'clock

17 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:33 o'clock  
3 p.m.)

4 THE WITNESS: Before we start, I wanted to  
5 just say one thing. During the course of the lunch  
6 break I made some further inquiries with regard to  
7 some of the matters we discussed before. With regard  
8 to the boxes of material at the Chester facility that  
9 we retained, actually any -- any box of material,  
10 there was an indication on the box of the source of  
11 that material, where in the company that it came  
12 from.

13 Q. Anything else?

14 You're ready to go ahead?

15 A. Sure.

16 Q. Let me just follow up on that.

17 A. Okay.

18 Q. We've been talking about the records of  
19 materials retained. Was the information you've just  
20 testified about the location of the boxes of some of  
21 the materials, was that information also included on  
22 the records of materials retained?

23 MS. YELENICK: Objection to form.

24 A. Yeah, I -- I'm not clear on what your question  
25 is again. Could you --

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1           Could you either read it or just rephrase it?

2   Q.   Certainly.

3           You talked previously, and we've been talking  
4   about for some time now, the document that -- or  
5   lists or compilation, whatever you'd like to call  
6   it --

7   A.   It was just a record we maintained.

8   Q.   Okay.  Of records of materials retained, and at  
9   this point specifically what we're talking about is  
10  the information retained by Chadbourne & Parke from  
11  the document review conducted of American Tobacco  
12  Company on or about February 1995.  Was the  
13  information you've just talked about, the location of  
14  the materials that was contained on the boxes, was  
15  that information also then reflected and placed on  
16  the records of materials retained?

17  A.   Let me -- just one part of your question.  You  
18  talked about records retained by Chadbourne & Parke.  
19  I mean we -- records were maintained by -- by the  
20  company --

21           Chadbourne & Parke, as -- as attorneys for Brown  
22  & Williamson, successor in interest to The American  
23  Tobacco Company, retained those records on behalf  
24  of -- of the company.  I just -- just add clarity  
25  about that.

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1 Q. Right.

2 A. And I assume your question incorporates that  
3 information.

4 Q. Right, which I think we -- I hoped that we had  
5 established earlier.

6 A. Okay.

7 Q. But in any event that was my understanding, --

8 A. Okay.

9 Q. -- that Chadbourne & Parke had maintained this  
10 information on behalf of the company following this  
11 review and subsequent transfer of at least some  
12 portion of the documents from Brown & Williamson as  
13 part of the sale of American Tobacco Company to Brown  
14 & Williamson. Correct?

15 A. I believe that is correct.

16 Q. And just coming back to my question again, was  
17 the box-location information or the file-location  
18 information that was placed on the physical boxes  
19 also reflected on this records of materials retained?

20 A. I believe we retained --

21 The information contained on the box is -- is  
22 recorded within our -- our files.

23 Q. And that recordation then --

24 Why don't we just agree to a term for these,  
25 because we seem to have a couple around. So what

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1 would you like to call this document that's being  
2 produced?

3 I assume it is a document; right? It's a  
4 listing of these boxes and these files --

5 A. Well that may be a bit misleading. I would  
6 define it as -- as -- as a record of the information  
7 that -- that in our files is information allowing us  
8 to determine for a given box what the source of that  
9 box was.

10 Q. Okay. And there's also information pertaining  
11 to Chadbourne & Parke that allows you to say here is  
12 the following information we retained from Chester --  
13 Chester, Virginia facilities following our review in  
14 January and February of 1995; correct?

15 A. That -- that might require a compilation of --  
16 of information to be created, but we have the  
17 information.

18 Q. Okay. And the compilation might have to also go  
19 out and gather presumably similar lists or  
20 recordation that was made at other facilities you  
21 reviewed, too, as well as the Chester, Virginia  
22 facility?

23 A. I believe it would be more than just the Chester  
24 facility.

25 Q. And I'm going to go through each of those

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1 facilities one at a time here just so we have clarity

2 as to specifically what was done --

3 A. Okay.

4 Q. -- and how those records were retained --

5 A. Uh-huh.

6 Q. -- after the sale and before the physical

7 transfer of the company assets over to B&W.

8 A. Well we're talking about the sale and the

9 merger. Are those the two events you were just

10 distinguishing?

11 Q. Well I actually think we were talking -- what

12 I'm distinguishing --

13 The sale took place, and then at someplace after

14 the sale the physical transfer of documents that

15 would accompany that sale took place; right?

16 A. That's correct.

17 Q. When B&W bought American Tobacco Company,

18 they're entitled to certain records from American

19 Tobacco Company as part of their purchase; correct?

20 A. I believe that that -- that all the records of

21 The American Tobacco Company were transferred.

22 Q. In fact, was that part of the contract between

23 American Tobacco Company or American Brands and the

24 purchasing company, either B.A.T. or B&W?

25 MS. YELENICK: Objection, form.

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1 A. I do not know what the terms of the contract  
2 were. It is my understanding that pursuant to the  
3 sale these materials were transferred.

4 Q. By the way, have copies of those contracts,  
5 those purchase agreements, ever been produced in this  
6 litigation?

7 A. In the Minnesota case?

8 Q. Yes.

9 A. Of the contract between Brown & Williamson and  
10 American Tobacco Company? I mean -- the --

11 Q. Let's just say -- let's just say the contracts  
12 involving the sale of American Tobacco Company and  
13 subsequent merger of B&W, since I've seen conflicting  
14 testimony on who exactly bought the entity.

15 A. Sitting here today, I don't know for a fact  
16 whether that document was or was not produced in this  
17 litigation. The best evidence of whether it was or  
18 not would be the 4B index which we have prepared for  
19 the plaintiffs in this matter. If -- that's --

20 That's the best way of answering that question.

21 Q. Coming back to this records of materials  
22 retained -- and again, for right now I'm referring to  
23 the record that relates to the documents retained by  
24 Chadbourne & Parke from the Chester, Virginia  
25 facility, the R&D facility -- who prepared that

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1 document or documents?

2 THE WITNESS: I'm sorry, could you repeat  
3 that question?

4 (Record read by the court reporter.)

5 A. The record for each box would have been prepared  
6 by Chadbourne attorneys, assisted by paralegals under  
7 their direction. Also possibly by King & Spalding  
8 attorneys and paralegals as well.

9 Q. And King & Spalding had access to the  
10 information in those records and boxes; correct?

11 A. They would --

12 Your question is a little -- a little  
13 confusing. Could you rephrase it? I'm just not  
14 clear exactly what you're asking for in that  
15 question.

16 Q. Certainly.

17 It's my understanding that some kind of a record  
18 was made for each box of materials retained by  
19 Chadbourne & Parke on behalf of The American Tobacco  
20 Company from the Chester, Virginia facility; correct?

21 A. That is correct.

22 Q. As to each record for each box, did King &  
23 Spalding have access to any of those records at any  
24 time?

25 A. I'm not aware of them having access to that.

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1 They, as I said, participated in the process of  
2 creating a record of what materials was -- were  
3 retained.

4 Q. Was a copy of each record actually sent to B&W  
5 for its records?

6 MS. YELENICK: Objection to form.

7 A. I honestly don't know the answer to that  
8 question.

9 Q. Would the same answer obtain if I asked you  
10 whether a copy was sent to King & Spalding?

11 A. I'm not aware of a copy being sent to King &  
12 Spalding.

13 Q. And again, the general information contained on  
14 these records concerning each box retained is general  
15 information concerning what files are in the box and  
16 where the files came from; correct?

17 MS. YELENICK: That's work product,  
18 counsel.

19 MR. O'FALLON: I'm asking for the factual  
20 information.

21 A. I -- I believe that is privileged. The -- the  
22 types of information contained in the records, I  
23 believe, is -- is privileged.

24 Q. See, the court's order indicates that I'm  
25 entitled to the general subject matter of the

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1 statements, and the statements here, I would take it,  
2 would be these records made for each box, and so I  
3 just want to know the general subject matter of those  
4 records.

5 A. Fair enough. The subject matter of the records  
6 would be those pieces of information that Chadbourne  
7 attorneys or King & Spalding attorneys believed to be  
8 necessary to be recorded with regard to the contents  
9 of that box.

10 Q. What types of information would be recorded?

11 MS. YELENICK: Objection, work product.

12 Q. Again general subject matter. What types of  
13 things would be recorded?

14 MS. YELENICK: Same objection, same  
15 instruction not to answer.

16 Q. Names of files, would those be recorded?

17 MS. YELENICK: Same objection, same  
18 instruction.

19 Q. Physical location of the document, would that be  
20 recorded?

21 MS. YELENICK: Same objection, same  
22 instruction.

23 Q. Names of the individuals who the documents were  
24 taken from, would that be recorded?

25 MS. YELENICK: Objection, work product.

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1 Q. Titles from the tops of files, would that be  
2 recorded?

3 MS. YELENICK: Objection, work product.

4 Q. Please name for me all the attorneys from  
5 Chadbourne & Parke who actually participated in this  
6 process.

7 MS. YELENICK: Objection, work product.

8 Q. What's the name of your department at Chadbourne  
9 & Parke, the department you specifically are in?

10 A. My department?

11 Q. Uh-huh.

12 A. I believe the title of my department is the  
13 products liability department.

14 Q. Are you aware of a health law department at  
15 Chadbourne & Parke?

16 A. No.

17 Q. Does any such department exist at Chadbourne &  
18 Parke?

19 A. I'm not aware of any department by that name.

20 Q. And just so I'm clear and I can bring an end to  
21 this particular portion of this questioning, there  
22 wasn't a listing made by Chadbourne & Parke of the  
23 documents that B&W took as part of the purchase;  
24 correct?

25 A. That is correct.

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1 Q. Was there a list made by King & Spalding?

2 A. I don't know.

3 Q. Did you ever ask them?

4 A. No, I did not.

5 Q. And part of your --

6 Now again, this entire process was completed

7 before any document requests had been served by the

8 state of Minnesota in the pending litigation;

9 correct?

10 A. When you say "this entire process," what are you

11 referring to?

12 Q. Well the process we've just talked about about

13 reviewing and collecting and parcelling up documents

14 from that Chester, Virginia facility.

15 A. That is my understanding.

16 Q. Once you were done with this process, were there

17 any documents left in the Chester, Virginia facility,

18 the R&D department?

19 A. To the best of my knowledge, there were -- I

20 don't believe there were documents remaining in the

21 R&D department. As I testified earlier today, I

22 believe the Hammer Division at the Chester facility

23 may have been and actually I believe did continue to

24 operate, and therefore documents necessary for that

25 operation would have still been on the premises. It

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1 is my understanding that the R&D documents were --  
2 were removed at that point unless there was a need to  
3 keep some of them there for the operation of Hanmer,  
4 but I don't know.

5 Q. So prior to the time the Minnesota plaintiffs  
6 served requests for production of documents, all  
7 documents from the R&D facility in Chester, Virginia  
8 were either in the possession of B&W, in the  
9 possession of Chadbourne & Parke, or had been  
10 destroyed; correct?

11 A. I believe that's correct, assuming that when you  
12 say "in the possession of B&W," you mean to the  
13 extent that they were continuing to operate any of  
14 those facilities, that it would include those  
15 materials as well.

16 Q. Right. Well I'm not actually limiting it in any  
17 fashion. I'm just saying that's really the three  
18 locations that all the documents went to.

19 A. Right. And again, Chadbourne was holding them  
20 on behalf of its representation of Brown &  
21 Williamson, successor to The American Tobacco  
22 Company.

23 Q. Was the same procedure followed for the  
24 administrative offices at the Chester, Virginia  
25 offices?

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1 A. The same procedure as -- as what?

2 Q. The same procedure we have been discussing here  
3 concerning the review of the documents and the  
4 separation of those documents and their need to go to  
5 three different locations.

6 A. I believe that's correct.

7 Q. Do you have any doubt in your mind about that?

8 A. No.

9 Q. So again, all the documents from the  
10 administrative part of the Chester, Virginia facility  
11 were either in Brown & Williamson's possession, in  
12 Chadbourne Park's possession, or have been destroyed;  
13 correct?

14 A. That's correct.

15 Q. And again, there were records made of documents  
16 that were retained by Chadbourne Parke; correct?

17 A. There were -- that's --

18 There were records maintained of -- of the boxes  
19 that were retained.

20 Q. And by accessing those records, you can  
21 determine the actual documents that were retained;  
22 correct?

23 A. I don't believe that's the case.

24 Q. Did those lists that were maintained list  
25 everything that was in that box?

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1 A. We're -- we're back to lists now. I thought --

2 Q. Records retained. Your records retained

3 document, did that list everything contained in that

4 document -- in that box?

5 A. The records were on --

6 Well I don't want to go into the content of --

7 of what we -- what types of information we -- we

8 retained, but they were on a box basis.

9 Q. Was that information computerized?

10 MS. YELENICK: Objection, work product.

11 A. By whom?

12 Q. Chadbourne Parke.

13 MS. YELENICK: Same objection.

14 Q. You're not going to tell me whether the

15 information was computerized.

16 A. I've been instructed not to answer.

17 Q. The fact of computerization is something that

18 you think falls within the ambit of the work-product

19 protection.

20 MS. YELENICK: Objection to form. Is that

21 a question?

22 A. You're asking me were this -- was this

23 information ever computerized by Chadbourne

24 attorneys.

25 Q. Yes.

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1 A. I believe that's work product.

2 Q. What physically do the pieces of paper on which  
3 this information is kept look like?

4 A. I believe they are eight-and-a-half-by-11 pieces  
5 of paper.

6 Q. Do they have a certain denotation at the top?

7 A. The content of those documents was designed and  
8 determined by attorneys representing the company.

9 Q. Are they forms?

10 A. I believe that is correct.

11 Q. Did the forms have a name?

12 MS. YELENICK: Objection, work product.

13 Q. Are you now taking the position that even the  
14 name of the forms is a work product?

15 MS. YELENICK: Same objection.

16 Q. Is it your opinion that that takes some legal  
17 thinking in order to get at that name on the top of a  
18 form?

19 MS. YELENICK: Objection to form of that  
20 question.

21 A. You're asking me for a legal opinion then.

22 Q. I'm asking the basis of your inability to  
23 answer.

24 A. I've been instructed not to answer.

25 Q. How do you define "document?"

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1 MS. YELENICK: Objection to form.

2 A. You're asking me as a lawyer or as a -- as -- in  
3 what capacity?

4 Q. I'm asking you as a member of the -- as a  
5 representative of The American Tobacco Company. If  
6 you were asked to look for documents, how would you  
7 define "document?"

8 A. I would define "documents" by looking at any  
9 applicable rules that applied to such a request and  
10 any definitions that might have appeared within the  
11 body of the requests, and taking into account the  
12 phrasing used in the request and any applicable law  
13 or similar guidelines. That would be my definition.

14 (Plaintiffs' Exhibit 30 was marked  
15 for identification.)

16 BY MR. O'FALLON:

17 Q. Plaintiffs' Exhibit 30 is a document entitled  
18 "PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
19 DOCUMENTS TO THE AMERICAN TOBACCO COMPANY." Have you  
20 seen this document previously, sir?

21 A. Yes, I have.

22 Q. Would you please look on page three for your  
23 definitions?

24 A. Just want to quickly flip through it.

25 Okay.

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1 Q. Do you see under paragraph one a definition of  
2 document?

3 A. Yes, I do.

4 Q. Is that a definition of document you will  
5 accept?

6 A. I don't have in front of me our responses to  
7 these particular requests. I believe on occasion we  
8 have objected to the definitions that have been  
9 incorporated into pleadings served by the  
10 plaintiffs. If you're making a representation that  
11 we did not make such an objection, I'd like you to  
12 tell me that.

13 Q. I'm not making a representation one way or the  
14 other. I'm asking if you accept this as a definition  
15 of "document."

16 A. I do not necessarily accept it as a proper  
17 definition of the term "document." As I said, I  
18 would -- I would probably look to applicable law,  
19 court rulings and the like for the proper scope of  
20 it.

21 I do notice there are a lot of exclusions as  
22 well.

23 Q. Is there any document at Chadbourne & Parke that  
24 contains all the information concerning what was  
25 collected in the January and February 1995 timeframe,

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1 or any other timeframe that would have looked at  
2 this, concerning information retained by Chadbourne &  
3 Parke from American Tobacco Company files that was  
4 not either destroyed or given to B&W as part of the  
5 sale of American Tobacco?

6 A. Are you asking me, sitting here today, is there  
7 such a document?

8 Q. Uh-huh, I am.

9 A. I'm concerned that answering that question might  
10 require going into attorney work product.

11 Q. Just asking you about the existence of the  
12 document.

13 MS. YELENICK: You can answer that  
14 question.

15 THE WITNESS: Okay. I'm sorry, could you  
16 repeat the question again, just so I have the full  
17 content of it. Thank you.

18 (Record read by the court reporter.)

19 MS. YELENICK: On second hearing of that  
20 question, it's compound, counsel. You might want to  
21 rephrase it.

22 A. The reason I asked to have it repeated, I really  
23 don't understand that. If you could ask it in a  
24 different way. It's a very long question.

25 Q. What don't you understand about it?

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1 A. I got lost. It's a very long question. If you  
2 could ask it more narrowly.

3 Q. Do you have any document at Chadbourne & Parke  
4 that contains all the information concerning boxes of  
5 documents that were retained by Chadbourne & Parke as  
6 part of this review process we've been discussing in  
7 conjunction with the sale of American Tobacco Company  
8 to Brown & Williamson?

9 A. I'm not clear what you mean by "all the  
10 information."

11 Q. The information you've been discussing that  
12 appears on these box lists or box documents.

13 MS. YELENICK: Objection to form.

14 A. The problem in answering this question is to  
15 define the term "document" I've indicated would  
16 require resort to applicable rules as to what is a  
17 document. I don't have those before me and I don't  
18 believe it's appropriate for me to undertake a legal  
19 analysis to just answer as to whether such a document  
20 that fits that language exists.

21 Q. Is "document" a vague term to you, sir?

22 A. It's not a vague term. It's -- it's a specific  
23 term and it has a specific definition which I don't  
24 have in front of me.

25 Q. Okay. How about a written document, is there a

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1 written document containing the information I've just  
2 asked about?

3 A. All of the information you've just asked about?

4 Q. Yes.

5 A. I am not aware of such a written document.

6 Q. Is there an electronic document that contains  
7 all the information that I just asked about?

8 A. Again, it's the term "document" that I'm having  
9 trouble with. As I indicated before, Chadbourne  
10 maintains the information contained in the --  
11 regarding the boxes that were retained.

12 Q. Is there a compilation of all of that  
13 information that's physically located in one place?

14 A. Can I answer that?

15 MS. YELENICK: You can answer that  
16 question.

17 A. I believe there is.

18 Q. What is the form of that compilation?

19 A. It is my understanding that we have all the  
20 pieces of paper.

21 Q. So you've got all the pieces of paper together  
22 someplace.

23 MS. YELENICK: Objection to form.

24 A. Are you asking me if -- if maintained at  
25 Chadbourne is all the pieces of paper we talked

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1 about?

2 Q. You just said that in one location is gathered  
3 all those pieces of paper; correct?

4 MS. YELENICK: Objection to form.

5 A. The pieces of paper --

6 Yes.

7 Q. Okay.

8 A. I believe that's correct.

9 Q. What's the location of that gathering of pieces  
10 of paper?

11 A. Within Chadbourne & Parke. I don't know  
12 specifically.

13 Q. Is it all gathered together in one physical,  
14 small, definable place?

15 A. It's within our files. I'm not sure precisely  
16 whether it's in one room as opposed to a couple of  
17 rooms. I just -- I know it's within the building.

18 Q. How big physically is this compilation?

19 A. That -- that I honestly don't know. I don't  
20 know how many pieces of paper it was.

21 Q. Well why don't you give me your best estimation.

22 A. It would be pure conjecture. I don't know how  
23 many pieces of paper we're talking about.

24 Q. Who would know?

25 A. I -- I -- I do not know who in particular has

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1 the best knowledge with regard to the number of  
2 sheets of paper we're talking about here.

3 Q. Is there a paralegal that's in charge of that?

4 A. I'm not aware that there is.

5 Q. Is there an attorney that's in charge of that?

6 A. I'm not aware of anybody in particular whose  
7 specific bailiwick is that stack of papers.

8 Q. Does that compilation or stack of paper have a  
9 name by which you call it at Chadbourne & Parke?

10 MS. YELENICK: That's objectionable as work  
11 product.

12 Q. If I were going to ask you to produce that  
13 compilation of paper, what would I call that  
14 compilation of paper?

15 A. I don't know what you would call it.

16 Q. What do you call it?

17 MS. YELENICK: Objection, work product.

18 Q. The fact is it's not -- it's not work product.  
19 Are you going to refuse to answer that question?

20 MS. YELENICK: Same objection, same  
21 instruction.

22 Q. Is that compilation of paper also contained in  
23 an electronic medium?

24 MS. YELENICK: You can answer that  
25 question.

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- 1 A. I believe it is.
- 2 Q. Who has access to that electronic medium on
- 3 which that compilation is collected?
- 4 A. Chadbourne attorneys.
- 5 Q. Anybody else?
- 6 A. Not to my knowledge.
- 7 Q. Has anybody else ever looked at that compilation
- 8 of information other than Chadbourne attorneys or
- 9 people working directly for and paid by Chadbourne?
- 10 A. Not to my knowledge.
- 11 Q. Has Shook, Hardy & Bacon attorneys ever looked
- 12 at that information?
- 13 A. Not to my knowledge.
- 14 Q. Have King & Spalding attorneys ever looked at
- 15 that information?
- 16 A. Not to my knowledge.
- 17 Q. Have Leonard, Street attorneys ever looked at
- 18 that information?
- 19 A. Not to my knowledge.
- 20 Q. Is a similar compilation of information kept for
- 21 those documents that were destroyed as part of this
- 22 review process?
- 23 A. Now what do you mean by "a similar
- 24 compilation?"
- 25 Q. Another collection of documents. I believe you

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1 testified in the past that you did keep a listing of  
2 all documents destroyed during this January, February  
3 1995 review process; correct?

4 A. That's correct.

5 Q. And was a similar compilation -- or is a similar  
6 compilation kept of those pieces of paper generated  
7 out of that process?

8 A. My understanding is that the pieces of paper are  
9 maintained.

10 Q. Does that mean they're maintained separately in  
11 different locations as opposed to being pulled  
12 together?

13 A. I believe they're all maintained at Chadbourne &  
14 Parke.

15 Q. Are they all maintained together as one  
16 identifiable group of documents?

17 A. Again, I don't know if it's all in one room or  
18 multiple rooms, but I believe they are all  
19 approximately near each other.

20 Q. They're in a location such that if you were  
21 asked or ordered to copy and produce those, you'd be  
22 able to obtain them relatively quickly; correct?

23 A. I'm not sure what you mean by "relatively  
24 quickly," but --

25 Q. Within a week.

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1 A. Perhaps, yes.

2 Q. And how many documents or pieces of paper are  
3 there that relate to these destroyed documents?

4 MS. YELENICK: Objection to the form.

5 A. Could you rephrase that question?

6 Q. What don't you understand about it?

7 THE WITNESS: Okay. Could you read it  
8 back, please.

9 (Record read by the court reporter.)

10 A. Are you asking me how many of these sheets we're  
11 talking about exist?

12 Q. Yes, I am.

13 A. I do not know the exact number of those sheets.

14 Q. Could you give me an approximation?

15 A. I really have no idea. It would just be pure  
16 speculation.

17 Q. Is the information contained in those sheets  
18 also stored in an electronic medium?

19 A. Not to my knowledge.

20 Q. Who has access to those pieces of paper?

21 A. As before, Chadbourne attorneys and -- and  
22 paralegals.

23 Q. And no one else as far as you can tell?

24 A. Not to my knowledge.

25 Q. How about the Leonard, Street attorneys?

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1 A. I'm sorry, could you repeat the question?

2 Q. Certainly.

3 Do the Leonard & Street attorneys have access to  
4 these pieces of paper reflecting the documents that  
5 were destroyed in this 1995 time period?

6 A. To my knowledge they've never seen them.

7 Q. When I asked previously about whether the pieces  
8 of information concerning the documents retained were  
9 stored on an electronic medium, you answered yes.  
10 Can you tell me which electronic medium they're  
11 stored in?

12 A. I'm not sure what you mean by "which electronic  
13 medium."

14 Q. What kind of an electronic medium are they  
15 stored on?

16 A. Again, I -- I'm -- I'm not very technically  
17 sophisticated. I don't know what you mean by "which  
18 electronic medium."

19 Q. Are they stored on computers?

20 THE WITNESS: Can I answer that?

21 MS. YELENICK: You can answer that.

22 A. That's my understanding.

23 Q. Why don't you go back to Deposition Exhibit No.  
24 29. Look at the second page -- or the third page,  
25 actually, Bates number 835.

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1 A. Okay.

2 Q. Are you there?

3 A. Yes, I am.

4 Q. Do you know where these offices were located?

5 And I'm referring to the corporate offices that's  
6 listed on the top.

7 A. I'm a little bit confused by your question. Are  
8 you asking me where the individuals listed holding  
9 these titles were located?

10 Q. Well let's start first with the title at the  
11 top. Do you know where, in general, the corporate  
12 offices were?

13 A. I know there were executive offices at various  
14 locations.

15 Q. Do you know --

16 A. I don't know where a particular office was  
17 located.

18 Q. I'm sorry. Why don't you give me all the  
19 various locations for the executive offices that you  
20 were aware of in this timeframe, 1991.

21 A. Well again, 1991, I -- I really can't speak of a  
22 given timeframe what facilities existed at that point  
23 in time. I would be speculating.

24 Q. Can you speak about 1994?

25 By the way, certainly American Tobacco would

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1 know where these offices were all located in February  
2 1991; right?

3 A. Well I mean, --

4 MS. YELENICK: Objection to form.

5 A. -- my understanding is that some of these  
6 individuals might be at different geographic  
7 locations than others. I don't know for a fact. I  
8 say that may be the case.

9 Q. I would assume that's probably true, and what  
10 I'm really trying to get at is a denotation of all  
11 the various physical locations. That's what I'm  
12 trying to use these documents for, as a reference  
13 mechanism for you to tell me where all the physical  
14 locations of American Tobacco are, and that's why I'm  
15 in part using this document. So with that in mind,  
16 let's -- let's go back.

17 And we can actually run through these if it will  
18 make it quicker. It's really up to you what would be  
19 quicker. You can either tell me what you know in  
20 1991 about where various offices are located, to the  
21 best of your recollection, using general parameters,  
22 or I can specifically go through each one of these  
23 and ask you and you can say "yes" or "no." It's up  
24 to you.

25 A. Again, I don't know in 1991 how things were set

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1 up. I don't know, looking at this chart, where a  
2 given office would have been.

3 Q. Okay. Well let's do this: As far as I could  
4 tell, this was the most recent organizational chart I  
5 could find. Now maybe I missed a more recent  
6 organizational chart than 1991, but let's just use  
7 this as reflective, generally, of what types of  
8 offices were at American Tobacco and then let's move  
9 it up to the 1994, 1995 time period. And if you  
10 think some of these offices were not around then or  
11 you just don't know about them, then let's just say  
12 so. But what I'm trying to do is get at the various  
13 physical locations of the various parts of this  
14 company, and I'm specifically now going to look at  
15 this 1994, 1995 time period when you folks all went  
16 out and decided, you know, basically whether  
17 documents were going B&W, going back to Chadbourne &  
18 Parke, or being dumped wherever they were dumped.

19 MS. YELENICK: Objection to form.

20 Q. So with that in mind, let's -- let's go back to  
21 the document and I will try to walk you through this,  
22 unless --

23 Do you have a preference in how you'd like to  
24 proceed?

25 A. Well this is your deposition. I'm just telling

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1 you that, looking at this deposition, I cannot tell  
2 you where these particular individuals worked at a  
3 given point in time.

4 Q. Okay. Do you understand I'm not asking about  
5 individuals, that --

6 A. Right.

7 Q. -- I'm asking about departments?

8 A. Okay. Maybe this will move things ahead. I can  
9 tell you in 1994 what facilities I was aware of  
10 existed.

11 Q. Okay. And what we're going to do is use this in  
12 part to kind of double check that.

13 A. I don't think -- I don't think it's going to  
14 help any --

15 Q. Well --

16 A. -- because I don't have any special knowledge  
17 with regard to this.

18 Q. Well someone at American Tobacco would have  
19 special knowledge, wouldn't they?

20 A. Unfortunately there's no one currently at The  
21 American Tobacco Company.

22 Q. Well I understand that. But again we talked  
23 about this before: these people haven't disappeared  
24 from the face of the earth; have they?

25 A. I don't know if any have or not.

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1 Q. And you didn't make any inquiries to see whether  
2 they had before this deposition; correct?

3 A. What --

4 I'm not sure what inquiries you're referring  
5 to. Oh, in terms of whether they are dead or not?

6 Q. Well did you ever ask around to get a general  
7 overview of what the corporate structure was of  
8 American Tobacco Company in 1994?

9 A. Not in preparation for this deposition.

10 Q. You did look at these organizational charts  
11 prior to this deposition; right?

12 A. I looked at the documents which were designated  
13 by the plaintiffs.

14 Q. Which include these; correct?

15 A. That's correct.

16 Q. Who would be the best person that I could talk  
17 to to figure out exactly what American Tobacco looked  
18 like in 1994, at the time Minnesota sued American  
19 Tobacco? Who would be the best person?

20 A. I honestly have no idea.

21 Q. Really? None at all?

22 A. I don't know who would have that kind of  
23 comprehensive knowledge. I don't know.

24 Q. Have you ever looked around to try to find that  
25 out?

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1 A. Have I ever looked around to find out the  
2 precise subject matter you just asked me about? The  
3 answer is no.

4 Q. What's your best understanding as of 1994 where  
5 the corporate offices were located?

6 A. I believe there was a management facility in  
7 Stamford, Connecticut.

8 Q. And to the best of your recollection, what  
9 departments were contained at that Stamford,  
10 Connecticut facility?

11 A. I really don't remember specifically.

12 Q. Generally. I don't want --

13 A. That would be speculating. I really don't  
14 remember at a given facility what types of -- of  
15 offices were located there.

16 Q. Were you one of the individuals who went to  
17 Stamford, Connecticut to review documents?

18 A. Yes, I did.

19 Q. And did you in fact review documents?

20 A. Yes, I did.

21 Q. And from reviewing documents, did you get some  
22 general understanding of what kind of functions went  
23 on at Stamford, Connecticut?

24 A. With regard to the --

25 When I was there, I recall to the best of my

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- 1 knowledge that there were some either sales or  
2 marketing offices there. I believe there was some  
3 tax offices as well.
- 4 Q. Anything else?
- 5 A. That's all I specifically refer.
- 6 Q. How big a building was that?
- 7 A. It's not a tall building. I don't remember how  
8 many floors it had.
- 9 Q. Any estimate of the square footage?
- 10 A. I have no idea.
- 11 Q. Was there only one facility there?
- 12 A. Again, I don't -- in terms of --  
13 When you say "facility," you mean one building?
- 14 Q. Yeah, one building.
- 15 A. I believe it was one building. I don't know  
16 whether the company had all or just a part of that  
17 building.
- 18 Q. Do you know how many American Tobacco Company  
19 employees worked at that building?
- 20 A. No, I do not.
- 21 Q. Do you whether --  
22 Do you know whether or not documents have been  
23 collected from that Stamford, Connecticut site prior  
24 to 1994 for purposes of litigation?
- 25 A. I believe that in connection with document

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1 productions prior to 1994, that materials from that  
2 location were reviewed.

3 Q. Were any materials actually collected from that  
4 location previously?

5 A. I'm not sure how your question differs from the  
6 prior question.

7 Q. Okay. Well "reviewed" would mean the physical  
8 review of the documents. "Collection" would mean the  
9 actual removal and copying of some of those documents  
10 for further review to see if those documents should  
11 be produced.

12 A. It is my understanding that copies of some of  
13 those materials were made and used in the course  
14 of -- of prior productions.

15 Q. Is that fair, when I state that that's how the  
16 review process takes place, I mean is it first  
17 attorney review, then attorney collection, then  
18 attorney production?

19 A. I'm not sure it is always one methodology of  
20 doing it. It would depend on the -- the requests,  
21 the type of materials requested, the volume of the  
22 materials requested. I don't think there's a set way  
23 of doing it.

24 Q. We've talked a little bit about the review that  
25 you did in 1995 at the Chester, Virginia facility.

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1 There did you combine the review and collection  
2 process?

3 A. That's correct. We -- we looked at the files  
4 and -- and determined what materials need to --  
5 needed to be retained.

6 Q. And then later those materials were set aside  
7 and, presumably, as document requests came in from  
8 this litigation and other litigations, those  
9 documents were reviewed to determine responsiveness;  
10 correct?

11 A. As a result of the collection upon the sale,  
12 that created a universe of material from which --  
13 which is reviewed for -- for productions as  
14 appropriate.

15 Q. How many pages are in that universe?

16 THE WITNESS: Can I answer that question?

17 MS. YELENICK: Yes, if you understand the  
18 question.

19 A. I assume you're --

20 My understanding is you're asking me how many  
21 pages were retained. Is that what you're asking me?

22 Q. Correct.

23 A. By Chadbourne on behalf of The American -- on  
24 behalf of Brown & Williamson, as successor of  
25 American Tobacco Company.

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- 1 Q. From all locations.
- 2 A. Apart -- apart from what was transferred to
- 3 Brown & Williamson.
- 4 Q. And what was destroyed.
- 5 A. My understanding is approximately 20 million
- 6 pages.
- 7 Q. And how many pages were transferred to Brown &
- 8 Williamson?
- 9 A. That I do not know.
- 10 Q. Do you have an approximation?
- 11 A. Absolutely no idea.
- 12 Q. Who would know that?
- 13 A. I would be speculating to -- to give you a
- 14 name. I do not know who has that precise knowledge.
- 15 Q. How would you find that out?
- 16 A. I -- I -- I presume I would ask someone at Brown
- 17 & Williamson or their counsel.
- 18 Q. If you were going to ask somebody at King &
- 19 Spalding, who would you ask?
- 20 THE WITNESS: Can I answer that?
- 21 MS. YELENICK: Yes.
- 22 A. I might ask Dan Willoughby.
- 23 Q. When you say there were 20 million pages of
- 24 documents retained during this process of separating
- 25 out those documents to go to Brown & Williamson,

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1 those documents to be retained and those documents to  
2 be destroyed, are you including in that 20 million  
3 documents that had been collected and previously  
4 retained at Chadbourne Parke?

5 A. Original documents you're talking about?

6 Q. Copies.

7 A. Copies?

8 Q. Uh-huh.

9 A. We're talking about --

10 The 20 million are original documents.

11 Q. Okay. So these 20 million are original  
12 documents.

13 A. That's correct.

14 Q. In addition are there at Chadbourne Parke  
15 another set of documents that are copies that have  
16 been produced or collected for previous litigation  
17 that's separate and apart from this group of  
18 documents?

19 A. My understanding is at Chadbourne are copies of  
20 some documents from The American Tobacco Company.  
21 Some of those may have been in connection with work  
22 done in prior productions.

23 Q. Okay. Are those maintained separately from this  
24 20 million pages of original documents?

25 A. That is my understanding.

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- 1 Q. Has anyone ever attempted to compare the two  
2 sets to see if there were some documents in one set  
3 that weren't in another?
- 4 A. Not to my knowledge.
- 5 Q. Let's go back to the Stamford, Connecticut --  
6 Is that Stanford or Stamford?
- 7 A. I believe it's Stamford with an "m" as in --
- 8 Q. Okay.
- 9 A. -- as in Murray.
- 10 Q. I have to tell you I always mess that up, so --  
11 For a long time I thought there was this great  
12 university.
- 13 A. Well there is a great university in Connecticut,  
14 but --
- 15 Q. But not -- but not Stanford.
- 16 A. That's right. I have no first-hand knowledge of  
17 that, by the way.
- 18 Q. Okay. Okay. And we're back.
- 19 Were records retained for each box of documents  
20 that Chadbourne & Parke retained from the Stamford,  
21 Connecticut facility, similar to the records we  
22 talked about previously?
- 23 A. My understand --
- 24 My understanding is a similar record was  
25 retained for each of those boxes.

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1 Q. And when we talked previously about these  
2 compilation of records, within that compilation of  
3 records would be records from these boxes collected  
4 from Stamford, Connecticut; correct?

5 A. Within the stack of paper we talked about, yes.

6 Q. Okay. And also within the stack of papers  
7 reflecting the documents that were destroyed would be  
8 stacks of paper reflecting the documents from  
9 Stamford, Connecticut that were destroyed; correct?

10 A. That is my understanding.

11 Q. Do you have any recollection of how many pages  
12 of documents were collected from the Stamford,  
13 Connecticut facility?

14 A. No, I do not.

15 Q. Do you have any recollection of how many pages  
16 of documents were destroyed from the Stamford,  
17 Connecticut facility?

18 A. No, I do not.

19 Q. Just so I can complete my loop, we talked about  
20 Chester, Virginia, but I'm not sure we talked about  
21 the Hamner Division of Chester, Virginia.

22 A. Uh-huh.

23 Q. And so let me just go back and -- and close that  
24 particular door.

25 Was a similar document review conducted by

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1 Chadbourne & Parke and/or King & Spalding or the two  
2 together at the Hanmer facility in Chester, Virginia?

3 A. Yes.

4 Q. And were certain documents retained from the  
5 Hanmer facility by Chadbourne & Parke on behalf of  
6 American Tobacco Corporation and its successor, B&W?

7 A. Well that's a little bit backward. But the  
8 answer to your question is yes, records were  
9 retained. As I indicated, I believe, earlier today,  
10 I believe the Hanmer Division continued in operation  
11 for a period of time. Some records would have been  
12 retained directly by Brown & Williamson, some would  
13 have been retained for the operation of that  
14 facility.

15 Q. At some point in time had that facility then  
16 shut down such that you had done another document  
17 review?

18 A. I don't know if that operation is still in  
19 operation or not.

20 Q. Has there been a subsequent document review of  
21 that facility?

22 A. Not to -- I don't --

23 I don't know. I honestly don't know.

24 Q. If it was, it wasn't conducted by Chadbourne  
25 Parke as far as you know.

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- 1 A. As far as I know, that it was not conducted.
- 2 Q. And again, somewhere in that compilation of
- 3 documents about boxes of documents retained I would
- 4 see some entries concerning the Hanmer facility at
- 5 Chester, Virginia; correct?
- 6 A. There would be documents reflecting what
- 7 materials were retained from that facility.
- 8 Q. And similarly there would be documents
- 9 reflecting materials destroyed from that facility;
- 10 correct?
- 11 A. There were, as I said, pieces of paper
- 12 reflecting that as well.
- 13 Q. Have we now discussed all The American Tobacco
- 14 Company facilities in Chester, Virginia and Stamford,
- 15 Connecticut as of 1994 that you're aware of?
- 16 A. I believe so.
- 17 Q. Looking back on the Exhibit No. 29, there's also
- 18 a reference there to the International Division. Do
- 19 you know where that was housed?
- 20 A. No, I do not.
- 21 Q. Research and quality assurance, again, I think
- 22 we've established that was in the Chester, Virginia
- 23 facility; correct?
- 24 A. That's correct.
- 25 Q. The control function, was that in Stamford,

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- 1 Connecticut?
- 2 A. Where are you looking?
- 3 Q. I'm just moving across from left to right in the
- 4 second -- the second level of executives down,
- 5 vice-president and controller.
- 6 A. Oh, controller. I don't know where his office
- 7 was.
- 8 Q. Okay. Vice-president of operations, do you know
- 9 where that general function was?
- 10 A. I'm sorry, I don't.
- 11 Q. The sales, do you know where sales was?
- 12 A. I don't know specifically. As I indicated, I
- 13 believe that either sales or marketing was to all or
- 14 partial degree included at Stamford. I don't know
- 15 for sure.
- 16 Q. So again we've covered both sales and marketing
- 17 with that question, correct?
- 18 A. I just -- I just don't --
- 19 There was something like that there. I don't
- 20 remember specifically.
- 21 Q. And the International Division you're not sure
- 22 about?
- 23 A. No. I don't know where that was.
- 24 Q. Let's look at page 837.
- 25 A. Okay.

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- 1 Q. Do you know where MIS is?
- 2 A. I don't know what it stands for.
- 3 Q. Do you know what the function of that department
- 4 was?
- 5 A. I've -- I've heard the term MIS before. I don't
- 6 know what it means particularly in the context of
- 7 this document and this company. The term MIS is a
- 8 term I've heard before just generally, without focus
- 9 on -- on American.
- 10 Q. Does it appear that it has to do with some
- 11 computer services for American?
- 12 A. I see the word computer on this page.
- 13 Q. Do you know whether, in August of 1994, American
- 14 had a computerized system whereby computerized
- 15 documents were available by network or other means to
- 16 all members of The American Tobacco Company?
- 17 A. I have no knowledge.
- 18 Q. Have you ever asked?
- 19 A. No.
- 20 Q. By the way, when you were looking and collecting
- 21 documents for retention from Stamford, Connecticut
- 22 and Hanmer Division and the Chester, Virginia
- 23 facility, did your retention include computer disks?
- 24 A. My understanding is it did.
- 25 Q. Did anybody make an effort to download all the

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1 information that was on the hard disks of the various  
2 computers at American Tobacco?

3 A. My understanding is that such downloading was  
4 done. I would -- I don't know --

5 I was not personally involved in all of that,  
6 but I believe that that was done.

7 Q. Do you know what they downloaded to? Did they  
8 download to disk? Did they download to tape?

9 A. I have absolutely no idea.

10 Q. Do you know whether those downloaded files are  
11 being stored at Chadbourne & Parke?

12 A. I don't know where those are being maintained.

13 Q. What are the other possibilities?

14 A. I mean I -- I honestly don't know. I don't -- I  
15 don't know. I mean it's -- it's one of -- of some of  
16 the possibilities we talked about. I don't know if  
17 it's maintained by Brown & Williamson. I don't know  
18 if it's maintained at Chadbourne. I don't know where  
19 it's maintained.

20 Q. Okay. Well if it's not maintained by Brown &  
21 Williamson and it's not maintained by Chadbourne, is  
22 there any other possibility other than destruction?

23 A. I don't believe it was destroyed. I imagine  
24 it's -- it's one of those two possibilities.

25 Q. Do you know whether it's an all or nothing

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1 thing? And let me go back. What I mean by that, I  
2 mean was all the computerized information either sent  
3 one place or sent the other, or was it looked through  
4 individually as well and -- and some of it sent to  
5 B&W and some of it to Chadbourne?

6 A. My --

7 Again, I really don't know the answer to that  
8 question specifically. All I can tell you is my  
9 understanding, that materials necessary for the  
10 ongoing operation of the company were retained  
11 specifically by Brown & Williamson, and that they may  
12 have included some or all of those materials.

13 Q. Were all the computers physically given to Brown  
14 & Williamson as part of the sale?

15 A. You're asking me now for the terms of the sale  
16 in terms of the -- that equipment.

17 Q. Well I'm really asking more as a transfer of  
18 documents. I mean whether we like it or not, a  
19 computer really serves two functions, one of those  
20 functions is to create documents, the other -- the  
21 other function is to store documents. And so I --

22 Really what I'm asking you is whether or not the  
23 computers were physically transferred to Brown &  
24 Williamson. Then I have a follow-up question which I  
25 think will further clarify, depending on your answer

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1 to that.

2 A. I don't specifically know the answer to that.

3 It's my understanding, and again I haven't looked --

4 seen the contract or anything like that, it's my

5 understanding that the equipment on site at the

6 company's locations would have been transferred

7 pursuant to the sale. That's just my understanding.

8 I -- that's my understanding.

9 Q. And then my follow-up question is this: Were

10 the storage capacity of those computers wiped clean

11 prior to the sale, or were they left intact?

12 A. I'm not sure what you mean "wiped clean before

13 the sale."

14 Q. Well again, --

15 A. I have no knowledge --

16 Q. -- certain computers --

17 A. -- that any computer information was erased

18 prior to the sale.

19 Q. Well I don't mean necessarily erased. Well I --

20 What could happen is this: For instance, if we

21 were to take this computer here, we could download

22 everything in that computer to a disk and then we

23 could erase the hard drive, and then we could give

24 that computer with that erased hard drive to someone

25 and it would be the computer absent the information.

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1 And so my question is really: When the computers  
2 were transferred to B&W, were they transferred with  
3 full information or were they transferred with  
4 partial information or were they transferred with no  
5 information?

6 A. My understanding is they would have been  
7 transferred with the information contained on them.

8 Q. Did Chadbourne Parke copy any of that  
9 information from those computers for individual  
10 storage itself at its facility on -- when it was  
11 storing the information on behalf of The American  
12 Tobacco Company prior to finalizing that transfer?

13 A. I got a little lost in that question. I'm  
14 sorry.

15 Q. What I'm really asking you is: When you have a  
16 computer -- again we've talked that you have certain  
17 information that can be stored on the hard drive.

18 A. Right.

19 Q. One option is to just send the computer over to  
20 Brown & Williamson with everything intact --

21 A. Uh-huh.

22 Q. -- and save copies of none of it.

23 A. Uh-huh.

24 Q. One option is to download all the information to  
25 disk, wipe the hard drive clean, and, you know, keep

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1 all the information and send the computer. A third  
2 way is to copy some of the information; that is, you  
3 transfer the computer and all of its information to  
4 Brown & Williamson but you download certain files,  
5 copies of certain files to disks and then -- and then  
6 retain those. Do you know whether that was done for  
7 any of the disks?

8 A. For any of the disks or --

9 Q. Sorry. Any of the information.

10 A. It's my understanding, to the best of my  
11 knowledge on this, that I believe certain of the  
12 computers were retained as is by Brown & Williamson  
13 for the ongoing operation of the facility. With  
14 regard to certain other computers, the data on the  
15 hard drives was backed up in some manner, and then  
16 after that data was retained in its entirety, the  
17 original hard drives on some computers were then  
18 erased after all the data had been retained. It's my  
19 understanding that after that process had been done  
20 with some of the computers, that the company donated  
21 some of those to charitable organizations.

22 Q. Were The American Tobacco Company computers  
23 networked?

24 A. I honestly don't know the answer to that  
25 question.

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- 1 Q. Who would?
- 2 A. I would imagine whoever was involved in -- at
- 3 the company in either networking or not networking
- 4 them.
- 5 Q. When you were doing this computer document
- 6 review and -- and retention, --
- 7 A. Uh-huh.
- 8 Q. -- did you consult with somebody who had been an
- 9 employee at American Tobacco about doing this?
- 10 A. In terms of going through the company's files?
- 11 Q. Yes.
- 12 A. I believe --
- 13 I don't know if this is the case for all
- 14 locations, but certainly in some of the locations we
- 15 did communicate with people who were on site who had
- 16 some knowledge.
- 17 Q. Do you recall the names of any of those people?
- 18 A. No, I do not.
- 19 Q. Do you know whether or not American Tobacco had
- 20 network access to American Brands?
- 21 A. I have no idea.
- 22 Q. Do you know whether American Tobacco had network
- 23 access to Gallaher's?
- 24 A. I have no idea.
- 25 Q. Did you ever ask that question?

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- 1 A. I did not ask that particular question.
- 2 Q. And when I say "you" on this one, I'm asking
- 3 about The American Tobacco Company. Has The American
- 4 Tobacco Company ever tried to ascertain whether or
- 5 not American Tobacco had network access or
- 6 computerized access to the files of American Brands
- 7 or Gallaher's?
- 8 A. I am not aware of any such inquiry. Simple
- 9 answer is I don't know.
- 10 Q. If you were trying to find out the answer to
- 11 that question, what former employee from American
- 12 Tobacco would you contact?
- 13 A. Again, I don't know who would have any kind of
- 14 knowledge on that subject.
- 15 Q. Where would you start?
- 16 A. I really have no idea.
- 17 Q. Do you keep in contact with any of The American
- 18 Tobacco employees?
- 19 A. Do I personally?
- 20 Q. Uh-huh.
- 21 A. What do you mean do I keep in contact? I --
- 22 Q. Have conversations with them.
- 23 A. No.
- 24 Q. Did you keep a listing of all The American
- 25 Tobacco employees who helped during this document

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1 review process that we've been talking about that  
2 went on as part of the transfer of assets from ATCo  
3 to B&W?

4 A. When you say "you," are we now speaking about me  
5 personally or --

6 Q. The company.

7 A. I'm not aware of any such lists.

8 Q. You personally?

9 A. I have no such list.

10 Q. Do you know where MIS was located physically?

11 A. No.

12 Q. Let's look at page 843.

13 A. Okay.

14 Q. This refers to customer service. Do you know  
15 where the customer service department was located?

16 A. No, I don't. Again, your question assumes it  
17 was located perhaps in one location. I don't know  
18 that that's the fact either.

19 Q. Do you know where any portion of it was located?

20 A. No, I don't.

21 Q. How about the human resource department?

22 A. Are you looking at a particular page now?

23 Q. Yeah, I'm looking at 849, although I'm not sure  
24 if there's anything on there that would help you.

25 But take a look.

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1 A. Again I -- I don't -- I don't know where they  
2 were located.

3 Q. How about the purchasing department?

4 A. Well, I mean on the top of that page I see a  
5 handwritten notation, which I can't totally read the  
6 handwriting. It could say Chester, I don't know. I  
7 don't know if that's what it says. I don't know if  
8 that indeed is the case. Beyond that I really don't  
9 know.

10 MS. YELENICK: Do you want to identify the  
11 page for the record?

12 MR. O'FALLON: It's 850.

13 Q. In looking through the documents at Chester, did  
14 it appear that any of these functions were at that  
15 particular office?

16 A. I honestly don't remember.

17 Q. Look at the next page, 851. This talks about  
18 the Reidsville branch.

19 A. Right.

20 Q. Could you tell me what was at the Reidsville  
21 branch?

22 A. The Reidsville branch is in North Carolina, and  
23 it was a manufacturing facility.

24 Q. What was manufactured there?

25 A. I believe cigarettes.

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1 Q. Have you been to the Reidsville branch?

2 A. To the best of my knowledge, I have never been  
3 to the Reidsville branch.

4 Q. Who was responsible for -- well strike that.

5 Is the Reidsville branch still in operation?

6 A. Once again, I'm not completely sure. I believe  
7 it continued in operation for a time after the  
8 collection we've talked about, but I don't know  
9 whether, sitting here today, it is still in operation  
10 or not. It might be.

11 Q. You were not one of the attorneys from  
12 Chadbourne & Parke who went there to conduct the  
13 document review and retention?

14 A. I did not physically go to the Reidsville  
15 branch.

16 Q. Who headed up that operation for Chadbourne?

17 A. I don't recall which Chadbourne attorneys and  
18 paralegals were involved at that facility.

19 Q. Was there anyone that you can recall that you  
20 kind of coordinated with?

21 A. If I'm not mistaken -- I have --

22 I have a slight recollection, but I'm not  
23 completely sure. Do you want that?

24 Q. Sure.

25 A. An individual named Steve Turano, who was an

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1 attorney at Chadbourne, who I believe may have been  
2 involved in that.

3 Q. And just to be fair, were you the person in  
4 charge generally of this review and retention project  
5 that was undertaken in January, February of 1995?

6 A. I was intimately involved in it. I am the  
7 person with regard to the -- the notice you have  
8 served that has the knowledge, best knowledge with  
9 regard to those matters. I have had comprehensive  
10 involvement in a supervisory level of the processes  
11 we've talked about.

12 Q. No, I understand that. I'm just wondering if  
13 you were the person --

14 Maybe I'm mistaken. I thought you were actually  
15 the person in charge of this project. Are you not  
16 the person at Chadbourne & Parke who was actually in  
17 charge, or did you also report upward?

18 A. Well I always report upward; put it that way.

19 With regard to the collection at -- at places  
20 like -- like Chester, and actually probably with  
21 regard to the collection at all the different  
22 locations, I believe I was the most senior person  
23 involved directly.

24 Q. It's kind of like on a brief. You know, there's  
25 always a list of names on a brief, and usually you

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1 have to go down below the first one to find the one  
2 who actually did the work, you know.

3       Would you have been the one who actually did  
4 most of the work in the collection and review from a  
5 supervisory level? Again, I'm not talking about did  
6 you go out and look at every document, but --

7 A.   In terms of most of the work, I mean it's hard  
8 to answer that question. I don't -- I don't know how  
9 many hours different people put into it. I was  
10 involved, as I testified, in collection at Stamford  
11 and at Chester. I believe, as I said, I was the most  
12 senior person involved in that process.

13       We also established at the outset of this  
14 deposition that I am counsel to Chadbourne & Parke.  
15 So as I said, there's always people above me.

16 Q.   Yeah. When you said you're counsel to  
17 Chadbourne & Parke, I'm sorry, what did --

18 A.   That's my title.

19 Q.   Okay. You're --

20       What does that mean?

21 A.   It means I'm not a partner.

22 Q.   Okay. Didn't follow up on that one.

23 A.   To the continuing frustration of my mother.

24       (Laughter.)

25 Q.   I suspect it's not just your mother's continuing

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1 frustration.

2 A. You got that right.

3 I'm in trouble now.

4 Q. If you want to strike that from the record, I  
5 won't mind.

6 MR. O'FALLON: Okay. Why don't we actually  
7 take 10 minutes and then we'll come on back.

8 THE REPORTER: Off the record, please.

9 (Recess taken.)

10 BY MR. O'FALLON:

11 Q. Not to sound like a Country Western song, but  
12 we're back in Reidsville.

13 A. Okay.

14 Q. And let me just ask you to go through the review  
15 process you conducted in that January, February 1995  
16 process down there. And again when I say "you," I'm  
17 referring to American Tobacco.

18 A. My understanding is that Chadbourne attorneys  
19 and paralegals -- and possibly, although I don't know  
20 for a fact if any King & Spalding attorneys and  
21 paralegals went to Reidsville -- and along with  
22 company employees, I believe they packed up materials  
23 found there, and I believe, if I'm not mistaken, that  
24 the Reidsville materials were either reviewed there  
25 or I believe they may have in whole or in part been

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1 sent to Chester where we did the review in Chester.

2 Q. So was the whole Reidsville plant document-wise  
3 packed up kind of lock, stock and barrel and moved up  
4 to Chester?

5 A. Well again as I said before, I believe the  
6 Reidsville facility continued in operation for a  
7 period of time. I don't know the detail of -- of  
8 what exactly was removed from Reidsville at that  
9 time. Other than the stuff that had to be kept there  
10 for operating the facility, I believe some materials  
11 were taken from Reidsville, sent to -- that had been  
12 reviewed by Chadbourne & Parke paralegals, sent to  
13 Chester, where we really did most -- most of the  
14 review process. Work --

15 Just give you a sense, there was a -- I believe  
16 it's called a print room or something like that, it  
17 was an enormous room, and that was our central  
18 location for, I believe, Reidsville and some other  
19 locations where materials would be sent, and we would  
20 do our review right there.

21 Q. So what happened basically is that you were just  
22 getting in these boxes from Reidsville on a daily  
23 basis and taking a look at them, and again separating  
24 them into these three groups; that is, B&W,  
25 Chadbourne & Parke, or document destruction.

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1 A. Well to understand, the -- I believe I said this  
2 before, but if I didn't, I'll just make it clear --  
3 the Brown & Williamson Company personnel went through  
4 varying locations and retained what they needed for  
5 ongoing operations. We did not see that material  
6 once they retained that. We looked at the balance of  
7 the material.

8 Q. Okay. Did they make the so-called first cut; in  
9 other words, at Reidsville, did the B&W employees go  
10 through and basically say okay, the following  
11 information is stuff we have to have to keep running  
12 this plant, and then they said and then you basically  
13 take everything else for review?

14 A. That is my understanding. I believe on some  
15 occasions during the course of our review on -- on  
16 this entire project that there might have been some  
17 occasions where we got ahead of them, and then they  
18 would look at the boxes that we had gone through  
19 already and make that judgment.

20 Q. And physically the boxes that were sent from  
21 Reidsville up to Chester for review, when a  
22 determination was made that some boxes needed to be  
23 given to B&W, were those boxes then sent back to  
24 Reidsville, or were they transferred someplace else  
25 at B&W?

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1 A. Are you talking about the boxes of the materials  
2 necessary to operate the facility?

3 Q. No, really I'm talking about the materials that  
4 weren't necessary to operate that were sent up to  
5 Chester. I mean it's my understanding that the first  
6 thing that B&W employees did is, for instance, at  
7 Reidsville, went through and said, hey, this  
8 information we simply have to have to run this  
9 facility. You all can have this stuff. They then  
10 take those boxes; that is, the "this stuff," and send  
11 that up to Chester, and then you -- you would then --  
12 as attorneys for Chadbourne & Parke, you'd go through  
13 that to make those determinations of what goes to  
14 B&W, what goes to Chadbourne, and what is destroyed.  
15 My question --

16 A. That's not really correct.

17 Q. Okay. Clarify what is correct.

18 A. I don't think --

19 Again, my understanding was Brown & Williamson  
20 personnel would go through first. If they were at a  
21 facility like Reidsville, where I understand it  
22 continued to operate, they would retain what was  
23 necessary for that facility to continue to operate.  
24 They would also retain, if, for example, certain  
25 materials were needed to continue the business at

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1 some other location, they would send those materials  
2 to other locations. What was remaining from that  
3 process was then reviewed by Chadbourne & Parke  
4 lawyers and paralegals, either there or it was sent  
5 to a place like Chester where we happened to be, and  
6 we did that follow-up review.

7 Q. Okay. As a part of that follow-up review, since  
8 the B&W people had already been through those boxes,  
9 are you now just making a determination as to whether  
10 Chadbourne & Parke retains it or whether it's  
11 destroyed, or is there still some part of those  
12 documents that could still end up going back to B&W?

13 A. At that point in time the review was do -- based  
14 on all the obligations imposed upon Brown &  
15 Williamson, as successor to The American Tobacco  
16 Company, which are the materials that need to be  
17 retained, and those would be retained. Those were  
18 retained by -- by Chadbourne.

19 Q. Okay. Okay. And so really in -- and maybe  
20 we're just waltzing around this.

21 A. I think we are.

22 Q. Was any -- was any part of that document --  
23 those documents that you reviewed after B&W looked  
24 at, decided that really B&W did need to retain those,  
25 and again B&W as B&W, not B&W as a successor to

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1 American Tobacco Company, and then sent back to  
2 them? For instance, did you ever go back to Brown &  
3 Williamson and ask them if they're going to need it  
4 to conduct that portion of the business, let's send  
5 them back to Reidsville?

6 A. No. This was --

7 The process I'm describing is a legal analysis  
8 based on all the obligations of Brown & Williamson as  
9 successor to The American Tobacco Company. It was  
10 not part of what we were doing to say this should now  
11 be sent to -- to Brown & Williamson specifically. It  
12 was a legal analysis.

13 Q. And so really the --

14 There were two end results from that legal  
15 analysis: either retain for potential production, or  
16 destroy; correct?

17 A. Well it was --

18 It's retained because you have to retain it, or  
19 you don't have to retain it.

20 Q. Okay.

21 A. Yes.

22 Q. So it's either retained or destroyed basically.

23 A. That's correct.

24 Q. In going back to my favorite pile of papers  
25 sitting in Chadbourne Parke, if I were to look for a

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1 listing or information concerning those boxes from  
2 Reidsville which had been retained by Chadbourne  
3 Parke, documents of that type would be found in  
4 that -- in that stack of papers; correct?

5 A. I believe there would be for each box of  
6 documents retained a piece of paper among our stacks  
7 of pieces of paper.

8 Q. And for each box of documents from the  
9 Reidsville plant destroyed, there would also be a  
10 similar piece of paper; correct?

11 A. That is my understanding.

12 Q. And there would be no piece of paper for those  
13 boxes of documents or for documents without boxes  
14 retained by B&W at the Reidsville facility; correct?

15 A. Either -- either at that facility or transferred  
16 by the B&W people to some other facility where they  
17 had need for that for the ongoing operations of the  
18 company.

19 Q. So the more appropriate question would be:  
20 There would be no record of any files retained by B&W  
21 from the Reidsville facility.

22 A. I'm not aware of any such record.

23 Q. Let's look on the next page of Exhibit 29, and  
24 that's 852.

25 A. Okay.

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1 Q. Where are the leaf facilities at for American  
2 Tobacco?

3 A. Again I don't know that specifically. I note on  
4 the page you're focusing on there's a reference to  
5 the Hanmer Division which we talked about.

6 Q. Right. I was just wondering, usually there's a  
7 separate leaf-purchasing facility or a leaf-storage  
8 facility that most of the companies have. Do you  
9 know where American Tobacco's leaf-storage facility  
10 is?

11 A. I don't know that. Sorry.

12 Q. On the next page, 853, this refers to the Hanmer  
13 Division; right?

14 A. It's cut off, but that seems to be what it's  
15 referring to.

16 Q. And generally did these functions correspond  
17 with the functions you understood to be taking place  
18 at the Hanmer Division when you looked at that  
19 facility in 1995?

20 A. Again I don't know the functions that took place  
21 there. I know the Hanmer Division was, as we've  
22 discussed previously today, a manufacturing facility.

23 Q. Of resubstituted sheet; correct?

24 A. I don't know about the "sheet" part of what you  
25 just asked. I believe reconstituted tobacco was

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1 involved.

2 Q. You generally under --

3 Do you have a general understanding of how they  
4 do the reconstituted tobacco?

5 A. I have no understanding of how they do that.

6 Q. Did you ever go in and look at it?

7 A. I don't remember ever being -- ever looking at  
8 the plant in operation, seeing exactly what was done.

9 Q. Were there any other facilities of American  
10 Tobacco Company that was reviewed for -- for  
11 documents as part of this sale in that 1995 time  
12 period again, that January, February 1995 time  
13 period?

14 A. Other than the ones we've talked about so far?

15 Q. Right.

16 A. Yes.

17 Q. Could you tell me what facilities those were?

18 A. I believe we've discussed so far Chester and  
19 Reidsville and Stamford, if I'm not mistaken.

20 Q. Correct.

21 A. In addition there was a Richmond warehouse in  
22 Richmond, Virginia.

23 Q. Anything else?

24 A. We also talked about materials maintained at  
25 Chadbourne, I think, also as -- as -- on a custodial

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1 basis.

2 Q. Right.

3 A. In addition to --

4 In other words, we've talked about Reidsville,  
5 Richmond, Chester, Chadbourne and Stamford. There  
6 was a Bronksville warehouse in Bronksville, New York.

7 Q. Anything else?

8 A. The other location I'm aware of where there were  
9 American Tobacco materials was in Greenwich,  
10 Connecticut -- Old Greenwich, Connecticut.

11 Q. And what kind of facility was there?

12 A. I believe the legal department had files there  
13 relevant to The American Tobacco Company.

14 Q. Any other location?

15 A. Just so I can go through the list, make sure  
16 we've got them all.

17 Q. Sure. And actually, if you want to just -- I'll  
18 go back through them just to make sure.

19 A. My recollection, we talked about about  
20 Reidsville and Richmond, we talked about Chester, we  
21 talked about Chadbourne, we talked about Bronksville,  
22 we talked about Greenwich and we talked about  
23 Stamford. To the best of my knowledge that is the  
24 list.

25 Q. Okay. Let's start with the Richmond warehouse.

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- 1 And I'll just take them in the order that you kind of  
2 named the new ones.
- 3 A. Okay.
- 4 Q. What was at the Richmond warehouse?
- 5 A. My understanding is that the Richmond warehouse  
6 is where -- it was the warehouse for the  
7 administrative center at Chester.
- 8 Q. So is this the document retention facility for  
9 that Chester office?
- 10 A. I just know it was the warehouse that they --  
11 that they used for whatever purposes they -- they had  
12 a warehouse.
- 13 Q. How big was that warehouse?
- 14 A. I was never there. I really don't know the size  
15 of it.
- 16 Q. Do you know how many boxes of documents were in  
17 the warehouse?
- 18 A. No, I don't.
- 19 Q. Do you know if there was an indexing system for  
20 the boxes of documents in the warehouse?
- 21 A. I don't know whether there was or wasn't.
- 22 Q. Who was the person at Chadbourne Parke most  
23 familiar with that warehouse?
- 24 A. With regard to that facility, I really don't  
25 know who -- who has any -- any more knowledge on that

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1 than I do.

2 Q. Usually when a company has a document retention  
3 warehouse -- and again, I'm using, in part, the  
4 information I learned from Lorillard -- there is some  
5 kind of an indexing or cataloging function that goes  
6 on at that warehouse. Who would I ask about that  
7 information and whether we could find that document?

8 A. I honestly don't know.

9 Q. You don't recall ever seeing that document,  
10 going through those warehoused documents?

11 A. Just clarification. That document would be?

12 Q. Yeah. Well again, usually what would happen is  
13 you've got kind of a records retention policy, and  
14 usually then there is also a -- a procedure in place  
15 for transferring documents from active files to cold  
16 storage or what we called cold storage. You know,  
17 any time you have -- any time you basically make a  
18 determination that certain documents no longer need  
19 to be in your active files but at the same time you  
20 make a determination you can't throw them out, you  
21 send them off site to some storage, and there's also  
22 an indexing function that goes along with that. And  
23 what I'm asking you is whether you know of anything  
24 about that process.

25 A. Your question covered a lot of material. I'm

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1 certainly aware the company had a records retention  
2 policy. I'm not aware of the type of indexing that  
3 you're talking about. I have no knowledge of that.

4 Q. Well, for instance, Lorillard had, I think it  
5 was called, a records transfer list that was actually  
6 somewhat similar to the process that Chadbourne Parke  
7 used when they went through and retained documents  
8 for the purposes of litigation, except this was  
9 something that was kept in the ordinary course of  
10 business, and that any time a department decided it  
11 wanted certain of its records to be out of its files,  
12 and presumably to make room for new records, it  
13 filled out one of those lists and put it in the box  
14 and then sent the box to the storage facility. And  
15 what I'm really asking is whether you know if there  
16 was any similar type of procedure in place at  
17 American Tobacco Company.

18 A. That was a long question, but the answer to it  
19 is I -- I -- I don't know whether there was or not.

20 Q. Was there any one person or persons that were in  
21 charge of the Richmond warehouse for American  
22 Tobacco?

23 A. Are you talking about an American employee who  
24 was in charge?

25 Q. Yes.

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1 A. I don't know whether there was or wasn't. I --

2 I don't know.

3 Q. Did American retain control of the warehouse or  
4 did it transfer control and/or ownership of the  
5 warehouse to B&W?

6 A. Well I mean at some point American ceased to  
7 exist, so I'm a little confused by your question.

8 Q. Well how about American --

9 Well American Brands technically owned American  
10 Tobacco; correct?

11 A. I believe American Tobacco was a subsidiary of  
12 American Brands.

13 Q. And it was American Brands that actually sold  
14 American Tobacco; correct?

15 A. I believe that --

16 MS. YELENICK: Calls for legal conclusion.

17 THE WITNESS: Okay.

18 MS. YELENICK: You can answer.

19 A. I believe that's correct. Again, I didn't look  
20 at the paperwork.

21 Q. Do you know whether American Brands retained  
22 control of the Richmond warehouse or whether control  
23 of that warehouse was turned over to B&W as part of  
24 the sale?

25 A. I don't know for a fact whether the Richmond

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1 warehouse was owned by The American Tobacco Company  
2 as opposed to leasing space. I don't -- I don't know  
3 that for sure. So I'm a little hesitant to --

4 I mean if it was owned by them, I believe it was  
5 transferred, but I don't know for a fact that it was  
6 owned at that time.

7 Q. Maybe we can get at this a different way. At  
8 some point did Chadbourne Parke attorneys go in and  
9 look at all the documents that were in the Richmond  
10 warehouse?

11 A. I believe that, as I described before with  
12 regard to each of the facilities at American Tobacco  
13 Company, the first step was for Brown & Williamson  
14 people to go through. After they did that and  
15 retained what they needed to retain for business  
16 purposes, then the Chadbourne & Parke attorneys and  
17 paralegals would do the review I described before.

18 Q. And did --

19 A. My understanding is that's true for the  
20 facilities we've -- we've talked about.

21 Q. For all the facilities.

22 A. I believe --

23 We could go through them in order, but I believe  
24 that's the practice we followed.

25 Q. And once that review process was done; that is,

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1 once the Brown & Williamson people and the Chadbourne  
2 attorneys were done with their review process at the  
3 Richmond facility, were all the Richmond documents  
4 either in Brown & Williamson's possession, in  
5 Chadbourne Park's possession, or destroyed?

6 A. I believe that is correct. I don't believe the  
7 Richmond warehouse continued -- assuming this was a  
8 single entity in which -- you know, that American  
9 Tobacco Company ran the whole thing as opposed to it  
10 being leased space, I don't believe that it continued  
11 to exist. Therefore, either --

12 Certain documents were retained by Brown &  
13 Williamson. The balance were then reviewed by  
14 Chadbourne & Parke attorneys and paralegals. In  
15 addition, I think, King & Spalding attorneys and  
16 paralegals. Again, I think part of that review might  
17 have been done with the documents being moved to  
18 Chester and reviewed down at Chester. But they were  
19 either determined to be retained or not retained.

20 Q. So regardless of whether the physical facility  
21 exists or not, it no longer contains any American  
22 Tobacco Company documents.

23 A. That is my understanding. Only with the caveat  
24 that I don't believe that Brown & Williamson  
25 continues to operate that facility, and assuming that

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1 it does not, then the answer would be that's correct.

2 Q. And if I were to go back to my stack of  
3 documents at Chadbourne & Parke, at some point I  
4 would see in that stack of documents pieces of paper  
5 relating to the boxes of documents from the Richmond  
6 facility that were retained by Chadbourne & Parke;  
7 correct?

8 A. Yes.

9 Q. And if I went to my other favorite stack of  
10 documents, I would see papers in that stack that  
11 related to those boxes of documents destroyed from  
12 the Richmond warehouse; correct?

13 A. Yes.

14 Q. Let's talk about the Bronkville warehouse for a  
15 second.

16 A. Okay.

17 Q. What was the function of the Bronkville  
18 warehouse in August of 1994?

19 A. Again, I'm -- I'm speaking in --

20 The time period I'm speaking to is the period  
21 subsequent to the sale, that's when I was involved in  
22 these processes, and I -- if -- if -- that's all I  
23 really can talk about.

24 Q. That's fine. Sure.

25 A. At that point in time the Bronkville warehouse

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1 was a warehouse for the legal department in Old  
2 Greenwich.

3 Q. And was a document review of the Bronksville  
4 warehouse conducted just like the document review of  
5 the Richmond warehouse was conducted?

6 A. The --

7 I was not personally involved in that process.  
8 I'm just trying to recall the best of my recollection  
9 of how that process was done. I don't know for a  
10 fact whether Brown & Williamson personnel came into  
11 that facility before we did or not. I don't -- I  
12 don't know that for a fact. They may have. I don't  
13 know. But to the extent that we went through the  
14 remaining American Tobacco materials at that  
15 facility, we would have followed a process similar to  
16 the process we've described before.

17 Q. Who was the on-site Chadbourne attorney who was  
18 most responsible for looking at the documents in the  
19 Bronksville warehouse?

20 A. I honestly don't remember who that was. I  
21 did --

22 As I say, I did not go through personally. I  
23 don't remember who was most involved in that process.

24 Q. Do you have any objection to maybe asking and  
25 finding out?

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1 MS. YELENICK: Again, you can send us a  
2 letter after the deposition.

3 MR. O'FALLON: Well I really would kind of  
4 rather do it here as part of the live testimony.

5 Q. Would it be possible tomorrow or even today  
6 during a break to just call back and find out who was  
7 up there? And again, I'm not looking for every --  
8 every person who was there, but I assume you usually  
9 had someone on site who was the most senior person.

10 A. Well I mean I believe that different people were  
11 involved in different aspects of the -- of this  
12 process. I just don't remember who it was. If you  
13 give us a letter, again, that's -- as Ms. Yelenick  
14 said, we will respond to it.

15 Q. Well I guess my request would be to ask you to  
16 call back tonight and just see if you can't find that  
17 out, and we can talk about that tomorrow.

18 MS. YELENICK: We'll take it under  
19 consideration certainly, Dan.

20 Q. Are you confident that at some point King &  
21 Spalding did go through this warehouse, or is there  
22 some doubt as to whether they even did?

23 A. I don't know if they were involved in that  
24 process. I know from first-hand experience that they  
25 were involved in the review process in Chester, which

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1 would have encompassed materials from Chester and  
2 some other materials from that general neck of the  
3 woods that -- such as, for example, the Reidsville,  
4 as I talked about before. They worked alongside us  
5 in -- in that process. I don't believe they were  
6 involved at all the facilities.

7 Q. And this may be one of the facilities they  
8 weren't involved; correct?

9 A. Quite possible.

10 Q. Were any documents from the Bronksville  
11 warehouse ultimately sent to Brown & Williamson?

12 A. That I don't know.

13 Q. Documents were retained by Chadbourne & Parke  
14 from the Bronksville facility; correct?

15 A. That is my understanding.

16 Q. And were documents destroyed from the  
17 Bronksville facility?

18 A. I don't know for a fact whether they were or  
19 not.

20 Q. How would you find that out?

21 A. Well, I guess one way to find it out would be to  
22 go through those many pieces of paper we've talked  
23 about.

24 Q. Any little simpler way to find that out?

25 A. I'm not really aware of any.

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1 Q. Again, if it would be possible, could you maybe  
2 ask somebody back at your offices to take a look  
3 through the electronic data and see if they could  
4 just figure out whether something from that facility  
5 was destroyed? I would really just like the answer  
6 to that question.

7 MS. YELENICK: There's some assumptions  
8 built in there. I'm mindful of your request.

9 MR. O'FALLON: Well there are really no  
10 assumptions built in there. What it really is is a  
11 request.

12 A. There is an assumption. You're asking me about  
13 materials that weren't retained from the Bronksville  
14 facility.

15 Q. I'm asking you about materials that were  
16 destroyed.

17 A. And you asked me about an electronic index.

18 Q. I thought we established that there was an  
19 electronic index for destroyed documents.

20 A. Unless I'm mistaken, my recollection of my  
21 testimony and my understanding is there is not an  
22 index of destroyed documents. Now I believe that's  
23 consistent with my prior testimony today.

24 Q. Okay.

25 A. I thought I made a distinction.

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1 Q. Well I wasn't clear about that. But if that's  
2 what the fact is, then that's what the fact is.

3 A. That is my understanding.

4 Q. So for destroyed documents, I need to go  
5 specifically to the papers, and there's no short-  
6 cutting I can take via electronic media.

7 A. That is my understanding. Again, we're talking  
8 about pieces of paper in both circumstances that are  
9 on a box basis, not individual documents.

10 Q. Right. Well I'll just make a request that steps  
11 be taken to determine whether or not in fact  
12 documents from the Bronksville facility were  
13 destroyed. And the reality is if you come back  
14 tomorrow and say you can't make that determination  
15 because you don't have enough time, then we can look  
16 to supplement it. But I think I'm entitled to that  
17 kind of information as I sit here today, to the  
18 extent it's reasonably available to you.

19 Going back to my other favorite stack of  
20 documents, however, I would be able to find pieces of  
21 paper for every box of documents retained from the  
22 Bronksville facility; correct?

23 A. I believe that is the case.

24 Q. Did that facility contain any documents or  
25 copies of documents that had been previously produced

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1 in prior litigation?

2 A. I don't know the answer to that, whether there  
3 is any overlap.

4 Q. Did American Tobacco or its in-house attorneys  
5 keep lists of documents that had previously been  
6 listed as privileged in prior litigation?

7 A. I have no knowledge whether they did or not.

8 Q. Does Chadbourne Parke keep lists of documents  
9 that have previously been listed as privileged in  
10 prior American Tobacco litigation?

11 MS. YELENICK: Objection, work product.

12 MR. O'FALLON: Once again you're stating  
13 that the fact whether or not those documents are kept  
14 is work product?

15 MS. YELENICK: The manner in which  
16 Chadbourne & Parke conducts its defense of The  
17 American Tobacco Company is work product, yes.

18 Q. Do you know whether in previous litigation  
19 Chadbourne Parke constructed privilege logs?

20 A. Your question is awfully broad. On behalf of  
21 whom? What -- what -- you know --

22 Q. Let's go back.

23 On behalf of the American Tobacco Company or any  
24 affiliate as part of smoking and health litigation,  
25 did Chadbourne Parke construct privilege logs in

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1 partial response to requests for production of  
2 documents in those pieces of litigation?

3 MS. YELENICK: Objection to form.

4 A. What time period are you talking about? Ever?

5 Q. Yup.

6 A. You're asking me has Chadbourne ever constructed  
7 a privilege log for The American Tobacco Company.

8 Q. As a foundational question I am.

9 THE WITNESS: Can I answer that question?

10 MS. YELENICK: You can answer that  
11 question.

12 A. Yes, we have.

13 Q. And have you kept copies of those?

14 A. I believe so.

15 Q. Now let me ask a question --

16 A. The log you're talking about. Correct?

17 Q. Well the privilege log itself.

18 A. The log.

19 Q. Now let's change a little bit from Chadbourne &  
20 Parke to The American Tobacco Company.

21 A. Uh-huh.

22 Q. Do you know whether The American Tobacco Company  
23 was sent copies of those logs?

24 A. No, I do not.

25 Q. And do you know whether American Tobacco kept

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1 copies of those logs?

2 A. I don't know whether they ever had them at all.

3 Q. Approximately how big is that Bronkville

4 warehouse?

5 A. Again, I was never there and I really have no

6 way of assessing that.

7 Q. Any idea of the general volume of boxes of

8 documents in there?

9 A. Of all the documents there?

10 Q. The boxes --

11 Yeah. Just a box count, roughly.

12 A. Well are you limiting this to The American

13 Tobacco's document, or whatever else --

14 I don't know what kind of facility it was.

15 Q. I'm really limiting it at this point to The

16 American Tobacco Company documents. I mean do you

17 have a rough estimate of the box count of documents

18 that when Chadbourne & Parke attorneys first walked

19 in there in January of '95 they were looking at?

20 A. No, I don't.

21 Q. Greenwich, Connecticut.

22 A. Okay. That's in Old Greenwich. Old Greenwich,

23 Connecticut.

24 Q. Oh, I'm sorry. I just thought you were saying

25 it was old.

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- 1           What's in Old Greenwich, Connecticut?
- 2   A.    A lot of people with nice houses.   Sorry.
- 3   Q.    No, no, no.   No.   No.   No, no, no.   Come on.
- 4   A.    The -- the legal department is maintained there.
- 5   Q.    Are there specific offices in Old Greenwich?
- 6   A.    Yes.
- 7   Q.    Do those offices still exist?
- 8   A.    Now which offices are we talking about?
- 9   Q.    The legal offices in Greenwich -- in Old
- 10   Greenwich.
- 11   A.    I believe the legal department in Old Greenwich
- 12   still exists.
- 13   Q.    Okay.   And is that legal department actually
- 14   American Brands' legal department?
- 15   A.    That is my understanding.
- 16   Q.    That brings me to a subject that I wanted to
- 17   cover in the deposition anyhow, and that is the
- 18   subject matter of shared departments; that is, shared
- 19   departments between American Brands and American
- 20   Tobacco Company.
- 21           Can you list for me all the departments which
- 22   you understand had shared functions between American
- 23   Brands and American Tobacco?
- 24   A.    That is an area I have virtually no knowledge
- 25   of.

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1 Q. Did American Tobacco have a risk management  
2 department?

3 A. I don't know.

4 Q. Did American Brands have a risk management  
5 department?

6 A. At what point of time are we talking about?

7 Q. Let's talk about the time you were undertaking  
8 your review in 1995.

9 A. Are you talking about a department identified as  
10 risk management? Is that --

11 Q. Yes.

12 A. If those were? I believe American Brands did  
13 have such a department.

14 Q. Did American Brands' risk management department  
15 also perform the risk management function for  
16 American Tobacco?

17 A. I don't know.

18 Q. Did you ever ask?

19 A. I did not ask that question.

20 Q. Was the risk management department at American  
21 Brands ever searched for documents responsive to  
22 document requests in the Minnesota litigation?

23 A. I don't know specifically.

24 Q. Who would know that?

25 A. I don't know.

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1 Q. Did lawyers for Chadbourne & Parke ever look at  
2 the American Brands risk management office for  
3 responsive documents?

4 A. In this case?

5 Q. In this case.

6 A. I don't know.

7 Q. Who would know?

8 A. Again, I don't know.

9 MR. O'FALLON: Let's go off the record for  
10 a second.

11 THE WITNESS: Sure.

12 THE REPORTER: Off the record, please.

13 (Recess taken.)

14 BY MR. O'FALLON:

15 Q. Do you know whether American Brands' accounting  
16 and finance department provided services to The  
17 American Tobacco Company?

18 A. I don't know.

19 Q. Do you know whether the accounting and finance  
20 department for American Brands was ever searched for  
21 documents responsive to the document requests in this  
22 Minnesota litigation?

23 A. I don't know.

24 Q. Do you know whether the American Brands' human  
25 resource department provided services to The American

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1 Tobacco Company?

2 A. I don't know.

3 Q. Do you know whether or not the human resources  
4 department of American Brands was ever searched for  
5 documents responsive to the Minnesota document  
6 requests?

7 A. I don't know.

8 Q. Do you know whether the office of corporate  
9 secretary of American Brands provided services to The  
10 American Tobacco Company?

11 A. I don't know.

12 Q. Do you know whether the office of corporate  
13 secretary of American Brands was ever searched for  
14 documents responsive to the document requests in the  
15 Minnesota case?

16 A. I don't know.

17 Q. Do you know whether the American Brands' public  
18 affairs department provided services to The American  
19 Tobacco Company?

20 A. I don't know.

21 Actually, I don't know that these departments  
22 you've listed actually exist, but I'm -- I'll take  
23 that at face value, that they actually do exist. But  
24 I have no knowledge about that.

25 Q. Okay. And do you have any knowledge as to

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1 whether the public affairs department of American  
2 Brands was ever searched for documents responsive to  
3 the Minnesota document requests?

4 A. I don't know.

5 Q. Do you know whether or not Gallaher's ever sent  
6 research to either American Brands or American  
7 Tobacco Company related to smoking and health?

8 MS. YELENICK: Beyond the scope.

9 THE WITNESS: Can you repeat the question?  
10 Sorry.

11 (Record read by the court reporter.)

12 A. What do you mean by research regarding to  
13 smoking and health?

14 Q. I can divide that in numerous ways, so let me  
15 give you a list that's kind of an exemplar. I would  
16 include in that research on the effects of nicotine,  
17 whether conducted on animals or humans, research on  
18 nicotine manipulation, research on the causes of  
19 disease, animal research concerning the causes of  
20 disease, skin-painting research, research conducted  
21 on humans of any type, psychological research on the  
22 motivation of smokers. And the list can go on and  
23 on.

24 A. And your question is whether any of that -- any  
25 of the matters you're talking about --

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1 Q. Right.

2 A. -- and documents --

3 Q. Where any of those --

4 Whether any of that research was ever

5 transferred to either American Brands or American

6 Tobacco Company.

7 MS. YELENICK: I have an objection as to

8 form, scope.

9 A. I don't know, one, that any of that ever took

10 place on the research you're talking about, and I

11 have no knowledge of anything, if --

12 You know, one, I don't know that any of the type

13 of research you're talking about ever took place, and

14 two, I don't know of any transfer of any materials

15 that you're talking about.

16 Q. Do you know whether copies of research from

17 Gallaher's, Ltd. were ever sent to Chadbourne Parke

18 attorneys?

19 MS. YELENICK: Objection, scope.

20 A. I don't know.

21 Q. Do you know whether Chadbourne & Parke attorneys

22 performed a function whereby they had to approve any

23 documents that were generated by various trade

24 associations with which Gallaher's was associated?

25 MS. YELENICK: Objection. Far beyond the

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1 scope of the notice in this case.

2 A. I don't know.

3 Q. Does Chadbourne & Parke have a European office?

4 A. Currently?

5 Q. Let's start with currently.

6 A. I believe we have an office in London.

7 Q. Does that office in London provide services to  
8 Gallaher's?

9 A. I honestly don't know what clients that office  
10 has.

11 Q. Has Chadbourne & Parke ever sent attorneys to  
12 England to look for smoking and health documents?

13 MS. YELENICK: Objection, attorney-client  
14 privilege, work product.

15 A. On the grounds of privilege, I can't answer.

16 Q. Have Chadbourne & Parke attorneys in Britain  
17 ever looked at Gallaher's facilities for smoking and  
18 health documents -- smoking and health documents  
19 responsive to document requests in this litigation?

20 MS. YELENICK: You can answer that  
21 question.

22 THE WITNESS: Could you repeat the  
23 question, please?

24 (Record read by the court reporter.)

25 A. No.

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1 Q. Have Chadbourne & Parke attorneys from the  
2 United States ever been sent to London or any other  
3 place in Europe to look for documents responsive to  
4 the state of Minnesota's requests in this  
5 litigation?

6 THE WITNESS: Can I answer that?

7 MS. YELENICK: Can I just read that  
8 question again? Give me a minute.

9 You can answer that question.

10 THE WITNESS: I'm sorry. Could you repeat  
11 the question?

12 (Record read by the court reporter.)

13 A. No.

14 THE WITNESS: Do I need to speak louder?

15 THE REPORTER: No.

16 THE WITNESS: Oh, sorry.

17 Q. Have Chadbourne & Parke attorneys ever reviewed  
18 the documents in the depository in Guildford,  
19 England?

20 A. In connection with this litigation?

21 Q. Or any other litigation regarding smoking and  
22 health ongoing at this time.

23 MS. YELENICK: Well that is work product,  
24 instruct you not to answer.

25 Q. Well then let's limit it to this litigation.

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1 THE WITNESS: Can I answer that question?

2 MS. YELENICK: You can answer that  
3 question.

4 THE WITNESS: Could you repeat it, please.

5 (Record read by the court reporter.)

6 A. For this litigation.

7 Q. Correct.

8 A. Not to my knowledge.

9 MR. O'FALLON: Just so I understand, maybe  
10 helping me answer questions, is it your position, Ms.  
11 Yelenick, that if I ask a specific question about  
12 what Chadbourne & Parke attorneys did in this  
13 litigation, that that's not work product, but if I  
14 ask about it in relationship to any other litigation,  
15 that it is work product?

16 MS. YELENICK: The objection stands as  
17 stated, counsel.

18 MR. O'FALLON: I'm trying to get some  
19 clarification, ma'am, so I can structure my questions  
20 and get answers. Would you enlighten me a bit on  
21 that?

22 MS. YELENICK: Objection stands. I won't  
23 have a colloquy on the record.

24 MR. O'FALLON: So your answer is no, you  
25 will not enlighten me.

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1 MS. YELENICK: My statement stands,  
2 counsel.

3 MR. O'FALLON: I guess that's just a  
4 distinction I've never heard before, the old this  
5 litigation versus that litigation work-product  
6 distinction. But I'm sure as a large firm you've  
7 done plenty of research on this.

8 BY MR. O'FALLON:

9 Q. Are there any other American Brands departments  
10 that you're aware of which provided services to The  
11 American Tobacco Company?

12 MS. YELENICK: Objection to form.

13 A. I -- I don't know we established which  
14 departments, if any, other than perhaps the legal  
15 department, served any function.

16 Q. Is it your testimony that the legal department  
17 did provide functions both to American Brands and to  
18 The American Tobacco Company?

19 A. I believe that is the case, to the best of my  
20 knowledge.

21 Q. Did the legal department at American Brands also  
22 provide legal services to Gallaher's, Ltd.?

23 A. I have no idea.

24 Q. Do you know whether or not the legal department  
25 has in its files copies of research done by

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1 Gallaher's, Ltd.?

2 A. I have no idea, nor do I know what if any  
3 research was done.

4 Q. Have you ever looked at the legal files at  
5 American Brands to determine whether or not there is  
6 research from Gallaher's in those files?

7 A. Not for that purpose.

8 Q. Well for what purpose?

9 A. File records --  
10 American Tobacco Company records at the legal  
11 department were reviewed in the course of the  
12 collection we've described earlier today.

13 Q. If copies of research done by Gallaher's, Ltd.  
14 were contained in those legal files, would those  
15 copies of research have been produced in this  
16 Minnesota litigation?

17 A. Responsive documents that were not privileged  
18 which were contained within American Tobacco's files  
19 were reviewed for production in this case, and if not  
20 privileged, were or will be produced.

21 Q. Is it American Tobacco's position that documents  
22 from companies such as Gallaher's relating to smoking  
23 and health research that are in the files of American  
24 Brands legal departments are in fact responsive to  
25 the state of Minnesota's document requests?

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1 MS. YELENICK: Objection to form.

2 THE WITNESS: I got a little lost there.

3 Could you repeat the question, please?

4 (Record read by the court reporter.)

5 A. I'm not quite clear about what -- what that

6 question is -- is seeking.

7 Q. What's unclear?

8 A. Well I'm not -- to the extent --

9 Certainly to the extent that we are talking  
10 about American Tobacco files, those files were  
11 reviewed for production in this case. If you're  
12 talking about anything beyond American Tobacco files,  
13 then they would not have been reviewed for this  
14 case. American Tobacco's files were reviewed for  
15 this case.

16 Q. When you go into the legal department of  
17 American Brands, is there one file cabinet for  
18 American Tobacco and one file cabinet for American  
19 Brands and one file cabinet for Gallaher's, Ltd.?

20 A. I don't know precisely how their files are set  
21 up, sitting here today. I know that we were focusing  
22 on American Tobacco's files irregardless of where  
23 they were maintained.

24 Q. Were all of the files in American Brands legal  
25 department reviewed for potential production in this

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1 case?

2 A. We reviewed those documents in American

3 Tobacco -- American Brands -- or I'm sorry.

4 Could you repeat the question? I got a little  
5 lost. Can you just run it back by me?

6 (Record read by the court reporter.)

7 A. The files in the legal department relating to

8 The American Tobacco Company were reviewed for

9 production in this case.

10 Q. Were all smoking and health documents retained  
11 in the legal files of American Brands collected from  
12 the American Brands legal department for potential  
13 production in this case?

14 A. Those files relating to The American Tobacco  
15 Company would have been collected.

16 Q. How can you tell whether or not a file relates  
17 to The American Tobacco Company?

18 A. Well you read it. We also worked -- you know,  
19 got some input from people at the company.

20 Q. If a Gallaher research document was sitting in  
21 American Brands legal department and it was cc'd to  
22 an American Tobacco Company employee, would you  
23 consider that a document of American Tobacco?

24 MS. YELENICK: Objection to form, calls for  
25 speculation.

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1 A. You're now asking me for whether a given  
2 document was responsive in the Minnesota case.

3 Q. I'm asking you whether it would have been  
4 collected.

5 THE WITNESS: Could you please repeat the  
6 question he asked me prior -- previously?

7 (Record read by the court reporter.)

8 A. I'm a little concerned that answering that  
9 question might require attorney work-product input to  
10 make a determination of how one would as a legal  
11 matter classify that document.

12 Q. Are you instructing yourself not to answer?

13 A. Well I'm -- I'm --

14 THE WITNESS: Can I answer that question?

15 MS. YELENICK: Can you reframe it? I think  
16 you're --

17 THE WITNESS: Maybe -- maybe I'm hearing a  
18 different question than you're asking.

19 MS. YELENICK: I think that's right.

20 Q. I'm really asking you what was considered at  
21 American Tobacco Company when you looked at the legal  
22 files, how did you determine that a document was in  
23 fact an American Tobacco Company document?

24 A. My understanding is that the determination of  
25 what documents were American Tobacco documents was

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1 applied in a broad way, and documents which related  
2 to The American Tobacco Company specifically were  
3 considered.

4 Q. But how did you make that determination?

5 Well let me ask you this: Did you have a list  
6 of former American Tobacco Company employees so that  
7 if you came across a document that -- that may have  
8 related to one of those employees, you could look on  
9 a list and say, aha, this was an American Tobacco  
10 Company employee?

11 A. Again, I was not involved in the legal  
12 department collection. My understanding is that the  
13 collection there was done with some of the personnel  
14 there who knew which files related to The American  
15 Tobacco Company pursuant to the sale where documents  
16 relating to American Tobacco Company were  
17 transferred.

18 Q. Okay. Who was that person?

19 A. Who was what person?

20 Q. Who was the person that knew what files were  
21 related to The American Tobacco Company? Who in the  
22 legal department knew that?

23 A. It would depend whose files we're talking about.

24 Q. Well then who were the persons?

25 I presume presumably when you as Chadbourne &

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1 Parke went into that facility, you had to say to the  
2 individuals there, "Okay folks, what files here  
3 relate to The American Tobacco Company?" My question  
4 is: Who answered those questions, what American  
5 Tobacco employee?

6 A. I don't know specifically who answered those  
7 questions. I would --

8 My understanding is that it was persons who --  
9 who were familiar with these documents.

10 Q. Okay. What persons?

11 A. I don't know who that person or persons were.

12 Q. Do you know who any of those persons were?

13 A. I believe --

14 I don't know for a fact, and I don't want to --  
15 I don't want to speculate.

16 Q. Well --

17 A. I'm just -- I'm concerned about -- about  
18 attributing something to somebody, and I don't know  
19 whether that person or persons was -- were the person  
20 or persons involved.

21 Q. Well we can always find out later that they were  
22 not, and you can always correct this record, so why  
23 don't you give me your best understanding.

24 A. My understanding is that a person who would have  
25 participated in the determination of whether files

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1 were related to The American Tobacco Company at the  
2 legal department would have been Andy Rak.

3 Q. Can you spell that last name?

4 A. R-a-k.

5 Q. Now let me step back, because I may be confusing  
6 apples and oranges here a bit, too. Let's go back  
7 and talk just about the document review that was done  
8 in preparation for transferring documents to B&W.

9 A. Uh-huh.

10 Q. When that document review was done, Chadbourne &  
11 Parke attorneys had to go in and physically separate  
12 out The American Tobacco files from the American  
13 Brands and other files; correct?

14 A. I don't know who did that separation. I don't  
15 know whether it was just Chadbourne people or whether  
16 it was company personnel. I know that working  
17 together, Chadbourne attorneys and company personnel  
18 identified the files relating to The American Tobacco  
19 Company which were to be transferred pursuant to  
20 the -- to the sale.

21 Q. Okay. And again, I wasn't really going again  
22 back to who did it.

23 A. Uh-huh. Okay.

24 Q. I was just making sure I understood the  
25 process. That is what you were doing, you were going

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1 into American Brands' offices and saying basically,  
2 "Okay, legal department, we want to take out all the  
3 documents related to American Tobacco's business.  
4 And now we're going to do that, and so help us. And  
5 we're going to separate those out." Is that  
6 basically what was done?

7 A. I think that's basically correct.

8 Q. At that point in time you weren't really looking  
9 at American Brands' other files that may have been in  
10 existence for purposes of producing documents; were  
11 you?

12 MS. YELENICK: Objection to form.

13 A. I'm not clear --

14 MS. YELENICK: Vague.

15 A. -- what you mean by "American's other files,"  
16 "American Brands' other files."

17 Q. Okay. Well presumably you made --  
18 There was an initial cut made; and that is,  
19 there was a determination made that, you know, this  
20 group of documents are American Tobacco Company  
21 documents and this group of documents are not  
22 American Tobacco Company documents. Correct?

23 A. The process I described where we worked with  
24 company personnel was to identify which were The  
25 American Tobacco documents.

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1 Q. Okay. And the purpose of that review at that  
2 point in time wasn't necessarily looking just at  
3 litigation, it was also looking at making sure that  
4 you transferred to Brown & Williamson everything they  
5 were legally entitled to under the agreement;  
6 correct?

7 A. That is my understanding.

8 Q. So now basically we've got the legal files in  
9 American Brands' offices that legal department  
10 separated into two groups; that is, those files which  
11 we're not looking at concerning any transfer to B&W,  
12 and those files which we are looking at; correct?

13 A. I think that -- I think --

14 Well the more precise statement would be that  
15 documents relating to The American Tobacco Company  
16 were identified for us and I believe segregated. I  
17 also do not know whether or not there was a --  
18 whether American Brands would have sent any American  
19 Tobacco files directly to Brown & Williamson in  
20 connection with the sale. That may have been. I  
21 don't know.

22 Q. So that's another group of documents we don't  
23 know anything about.

24 A. Well I don't -- I don't know whether that in  
25 fact --

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1           It may have occurred. I don't know for a fact  
2 whether that occurred. I don't know the  
3 circumstances involving the sale and what was  
4 immediately transferred.

5 Q.   So American Brands may have -- you're not  
6 certain, but may have sent a certain group of  
7 American Tobacco documents directly to B&W.

8 A.   That is possible.

9           THE REPORTER: We have to go off the record  
10 to change tape. Off the record, please.

11           (Recess taken.)

12 BY MR. O'FALLON:

13 Q.   I want to just come back to the records  
14 department at Old Greenwich, Connecticut.

15 A.   Okay. Before we go ahead, I just wanted to say  
16 one thing. You asked before regarding some materials  
17 with regard to Gallaher. To the extent that there  
18 were materials regarding Gallaher in The American  
19 Tobacco files, those documents were reviewed like any  
20 other American Tobacco documents, including for  
21 production in -- in this case, and I believe in this  
22 case that we have produced documents that relate to  
23 Gallaher.

24 Q.   Do you believe specifically that you produced  
25 documents reflecting internal smoking and health

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1 research done by Gallaher's?

2 A. I don't know what the contents of those  
3 documents which we've produced in this case regarding  
4 Gallaher are. I would refer you to the 4B.

5 Q. And as you might suspect, I've actually looked  
6 on the 4B and I haven't found a whole lot, which  
7 is -- which is why my questions -- which is why I'm  
8 asking the questions I'm asking.

9 A. Yeah. I have nothing further to say about  
10 that. But that's -- that's -- I do want to say that.

11 Q. Do you know where those Gallaher's documents  
12 were obtained from that were produced in this  
13 litigation; that is, which of these physical  
14 locations we're now talking about?

15 A. No, I do not.

16 Q. Is there any way for you to determine that?

17 THE WITNESS: Can I answer that question?

18 MS. YELENICK: Is there a way of  
19 determining it?

20 A. You're asking is there a way of determining from  
21 which of the facilities we obtained the documents  
22 relating to Gallaher that were produced in this case.

23 Q. Yes.

24 A. I believe we could.

25 Q. How?

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1 A. Well one way would be go through all the boxes.

2 Q. I can't tell that from the 4B; correct? I don't  
3 believe that information was produced on the 4B.

4 A. As to which facility we obtained that particular  
5 document from?

6 Q. Right.

7 A. No, I don't believe that's on the 4B.

8 Q. And for most of your documents it's fairly hard  
9 to track on the 4A, because I believe you used a  
10 different Bates numbering system at the time of 4A's  
11 as opposed to now; correct?

12 MS. YELENICK: Objection to the form.

13 A. I'm not -- I didn't follow that. You're now  
14 talking about the 4A's.

15 Q. Well let me just ask you -- let me just ask you  
16 the question and then we'll get the answer. Is it  
17 your understanding that your 4A indexes refer by  
18 Bates numbers to the same documents and the same  
19 Bates ranges that are being used in this litigation?

20 A. Not on a --

21 Not on a one-to-one basis.

22 Q. Okay. Because that was my understanding. In  
23 other words, if I take the Bates number in this case,  
24 in other words, if I take, looking at Exhibit -- what  
25 was it, 29? The Bates number on the bottom of that

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1 document, ATX05 0058833, I won't necessarily find a  
2 corresponding Bates stamp number on the 4A; correct?

3 A. That numbering system does not appear on the 4A  
4 indices.

5 Q. Because you used a different Bates numbering  
6 system in previous litigation than you're using in  
7 the current litigation as to the documents produced  
8 to the state of Minnesota; correct?

9 A. Well that's -- that question assumes a lot. The  
10 documents --

11 Again, I don't want to go into work product on  
12 what is contained in the 4A indices beyond what has  
13 been ordered to be produced in this case.

14 Q. Well we can -- we can talk about specifically  
15 only that information that you've given us on your 4A  
16 indexes; that is, those fields of information.

17 A. Uh-huh. All right. So what exactly is your --  
18 your question?

19 Q. Okay. Well one of the fields of information  
20 that you provided us on the 4A index is Bates range;  
21 correct?

22 A. I believe that there are Bates ranges of -- of  
23 the documents. I believe that was one of the fields  
24 that was ordered to be produced for -- I'm not sure  
25 for four all, but for -- so --

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1 Q. But it's my understanding that those Bates  
2 ranges on the 4A's relate to litigation other than  
3 the Minnesota litigation, correct?

4 A. I believe that -- that some of the 4A's do  
5 relate to that.

6 Q. Do relate to other litigation.

7 A. That's my understanding.

8 Q. And it's also my understanding that American did  
9 not retain its previous Bates stamping numbers when  
10 it produced documents in this case; is that true?

11 A. It is true that in the production in this case,  
12 documents were numbered for this case specifically.

13 Q. And I won't be able to find on these documents  
14 old Bates stamp numbers, or I will be able to find  
15 old Bates stamp numbers?

16 A. Which documents are you referring to now?

17 Q. Documents that have been produced in this  
18 litigation but were also produced previously in other  
19 litigation.

20 A. My understanding is, number one, that we do not  
21 physically modify the original documents maintained  
22 in the American -- by The American Tobacco Company.  
23 My second understanding is that when we produce  
24 documents in a given case, we go to the files that we  
25 have and we determine which documents are responsive,

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1 and then they are numbered as they are in this case,  
2 you know, for the Minnesota production; therefore,  
3 the numbering would be -- that you see on the  
4 production is just the Minnesota production number.

5 Q. Okay. And again, this is part of the reason I  
6 was asking about previous litigation, because I want  
7 to have some clarity on the Bates numbering of those  
8 documents.

9 A. Uh-huh.

10 Q. In previous litigation did you Bates number  
11 original American Tobacco Company documents?

12 A. When you say did I Bates number original, do you  
13 mean do I -- did I put a number physically on the  
14 original document?

15 Q. Absolutely.

16 A. My understanding is we have never done that.

17 Q. Okay. So the documents in other litigations  
18 that contain Bates numbers are copies of original  
19 American Tobacco Company documents.

20 A. That's correct.

21 Q. And if I came across a document in this case  
22 that has a Bates number for the Minnesota litigation  
23 and another Bates number, I could assume that that's  
24 a document that was in fact taken from Chadbourne  
25 Parke's collection of documents produced in previous

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1 litigation; correct?

2 MS. YELENICK: Objection to form.

3 A. I -- I think that would be an improper

4 assumption.

5 Q. Well how else would that Bates number get on

6 there?

7 A. I -- you know, I don't -- I don't know what

8 you're talking about. I mean if there was a

9 particular document you want to show me -- I mean

10 I --

11 I don't know of a situation, I mean, where that

12 is the case. I haven't reviewed every piece of paper

13 we've produced in this case.

14 Q. Well why don't you go back to Exhibit 29.

15 A. Okay.

16 Q. Why don't you look on the very first page of

17 that.

18 A. Okay.

19 Q. You see up in the corner, if you turn the

20 document horizontally like this --

21 A. Uh-huh.

22 Q. -- and you look up in that right-hand corner, is

23 that a Bates number?

24 THE WITNESS: Can I answer that question?

25 MS. YELENICK: You can answer that

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1 question.

2 A. That is not a Bates number.

3 Q. What is that?

4 THE WITNESS: Can I answer that question?

5 MS. YELENICK: Yes.

6 A. Best of my understanding, that is an indication  
7 of which box that particular page came from, or that  
8 file, and which file in that box that file is.

9 Q. So this would be a document that was produced  
10 from box 936655, file number one?

11 A. That is my understanding.

12 Q. And presumably that particular number  
13 corresponds back to some listing you have in  
14 Chadbourne & Parke; correct?

15 A. It's -- it's the number of the box and the file  
16 within that box.

17 Q. Is this that electronic collection of documents  
18 that we've been -- or we've --

19 We referred again to our pile of papers  
20 concerning what's in every box; correct?

21 A. Okay.

22 Q. Is this the electronic denotation of a reference  
23 back to the box?

24 A. I don't believe that that is what that is. I  
25 believe the first six digits of what you've read to

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1 me is the number ascribed to that box, and the three  
2 digits after the hyphen is the number of the file  
3 which this is within that box.

4 Q. Okay.

5 A. And just to tell you, I mean we maintained the  
6 files as they were maintained by the company, and by  
7 putting this label on we're able to put the stuff  
8 back in the box the way we found it.

9 Q. But is this part of a database as well? If I  
10 were to go to your electronically maintained listing  
11 of all the documents retained and I punched in  
12 936655, would I then bring up that box number and a  
13 listing of all the files in that box?

14 MS. YELENICK: Objection, work product  
15 insofar as you're asking for the way the system, if  
16 it exists, operates.

17 A. A privilege objection has been raised. I can't  
18 answer the question.

19 Q. You can find out additional information about  
20 the box of documents from which this document was  
21 produced by using that number; correct?

22 THE WITNESS: Can I answer that?

23 MS. YELENICK: You can answer that.

24 A. Yes.

25 Q. And what additional information can you find

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1 out?

2 MS. YELENICK: That's work product.

3 Q. And again, that box listing, or whatever this  
4 reference is to, that hasn't been produced in this  
5 litigation; has it?

6 A. The stacks of paper we talked about?

7 Q. Well is that what this refers to, those stacks  
8 of papers?

9 A. Well I'm -- that is -- that is the box number.

10 Q. So this refers back to those stacks of papers.

11 A. Well each -- each piece of paper referred to a  
12 box.

13 Q. So this refers me to a specific piece of paper  
14 within that group of papers.

15 A. I believe they would be a corresponding piece of  
16 paper for the box whose number is reflected on this  
17 document.

18 Q. And if I went and grabbed that piece of paper,  
19 then I'd know more information about the box from  
20 which this document was produced; correct?

21 A. More information than what?

22 Q. More information than this number.

23 A. I believe that's correct.

24 Q. In other words, these aren't just idle numbers.

25 You use them; correct?

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1 A. This --

2 As I indicated, this numbering system was  
3 designed so we knew where the file came from so we  
4 could put it back where it belonged.

5 Q. Now does every document produced in this  
6 litigation contain one of these little numbers?

7 A. No. I believe, as I indicated, this is a box  
8 and file folder within the box indication. I believe  
9 there would be other file folders which would have  
10 that label on it. It's a label.

11 Q. So this little number right up here, if I were  
12 to see the original of this document, what I would  
13 see is this document with a little kind of tape label  
14 and that number on it?

15 A. I believe that's correct.

16 Q. Okay. This isn't an electronic or computer  
17 blowback of the document; correct?

18 THE WITNESS: Can I answer that question?

19 MS. YELENICK: You can answer.

20 A. You're talking about page ATX05 0058833?

21 Q. For right now I am, yes.

22 A. Sitting here today, I don't know whether that is  
23 or isn't.

24 Q. Okay. Have --

25 Has Chadbourne & Parke put the American

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1 documents -- have they imaged them on to disk?

2 MS. YELENICK: Objection, attorney work  
3 product.

4 Q. Is there any parts of this document that is a  
5 blowback from a computer disk?

6 A. Again, sitting here today, I don't know  
7 whether -- I don't --

8 I don't know.

9 Q. Could it be?

10 MS. YELENICK: Objection to form.

11 A. Could it be what?

12 Q. Could it be a blowback from a computer disk?

13 A. You're talking about just the first page of this  
14 document?

15 Q. I'm talking about any part of this document.

16 MS. YELENICK: Objection to form, calls for  
17 speculation.

18 A. I honestly don't know.

19 Q. You don't know whether it could or couldn't be?

20 MS. YELENICK: Asked and answered.

21 A. I don't know.

22 Q. Do you know whether or not any American Tobacco  
23 documents have been burned on to disk?

24 THE WITNESS: Can I answer that?

25 MS. YELENICK: By whom, counsel?

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1 MR. O'FALLON: Anyone. You're here as  
2 American Tobacco. Anyone.

3 MS. YELENICK: To the extent it might  
4 intrude on work product, it's obviously privileged.  
5 If you want to reframe your question --

6 MR. O'FALLON: Well it's not obviously  
7 privileged, it's not even arguably privileged. But I  
8 will keep the question as it is. If you're going to  
9 instruct him not to answer, make your instruction.

10 MS. YELENICK: If your question remains the  
11 same, then yes, the instruction is not to answer on  
12 the basis of work product.

13 Q. Did anybody from American Tobacco Company image  
14 documents on to computer disk?

15 A. Not to my knowledge.

16 Q. So if there are imaged documents, it's been done  
17 by Chadbourne Parke; correct?

18 MS. YELENICK: Objection to form.

19 A. I don't know if the plaintiffs have imaged.

20 Q. Well I'm not looking at plaintiffs' documents  
21 and I'm not here taking depositions about the  
22 documents that plaintiffs produced to The American  
23 Tobacco Company. I'm taking a deposition about the  
24 documents American Tobacco Company produced; --

25 A. What -- what is your question?

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1 Q. -- aren't I?

2 The question is: Are there American Tobacco  
3 Company documents that have been burned into  
4 computerized -- into computer disk?

5 A. By anybody?

6 Q. By anybody.

7 MS. YELENICK: The same instruction.

8 Objection, work product.

9 Q. Philip Morris hasn't had any problem providing  
10 that information. They don't apparently consider it  
11 work product. Is your stance different than Philip  
12 Morris on this issue?

13 MS. YELENICK: Objection to form.

14 A. Are you asking me?

15 Q. Yeah.

16 A. I can't comment on -- on what another company  
17 might or might not do. I'm -- I am bound now by an  
18 instruction not to answer with regard to your  
19 underlying question.

20 Q. And you think that's an appropriate instruction?

21 A. I think every instruction from my counsel is  
22 appropriate.

23 Q. So if an American Tobacco Company document has  
24 this box reference number on it, I can assume that it  
25 was produced from those documents collected during

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1 part of this February and January 1995 sweep of  
2 documents; correct?

3 MS. YELENICK: Objection to form.

4 A. Again, I don't know that that's the case. I  
5 don't.

6 Q. Well you're the one who produced the documents.  
7 If you don't know, who knows?

8 A. I'm --

9 Q. I'm just asking you to explain. I mean I've  
10 got -- I've got this number here on this document.

11 A. Right.

12 Q. I don't believe I've got it on every document.

13 A. I don't believe it would be on every document.

14 Q. Okay. So what's the difference? Why does this  
15 document have it and the other document not have it?

16 A. Well this is a file folder.

17 Q. Do only file folders have it?

18 A. I believe this is a designation of file folders  
19 so we know in a given box what the sequence of file  
20 folders is.

21 Q. So the information you collected about the  
22 documents you were collecting in February and January  
23 of 1995 included information specifically from the  
24 file folder; correct?

25 A. Well I mean we had the boxes. I'm not sure what

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1 your question is getting at.

2 Q. So you list the contents of the file folders;

3 correct?

4 A. No, I didn't say that.

5 Q. This would indicate this is file folder number

6 on in this box; right?

7 A. Right.

8 Q. And there's presumably other file folders in

9 that box.

10 A. Right. And I bet you the file folder after this

11 would have the number two on it.

12 Q. Right. And there's probably somewhere on your

13 list a statement of what this document is; correct?

14 A. What list are you talking about?

15 Q. Your records transfer list, your -- your big

16 stack of documents. After your number --

17 If I were to go and look at that -- look at that

18 document and look specifically for the entry for box

19 936655 and look at file folder number one, I would

20 find an explanation of what this file contained;

21 correct?

22 A. No.

23 MS. YELENICK: Objection to form.

24 A. No. As I indicated before, the big stack of

25 papers we're talking about are on a box level.

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1 Q. Well I know. And this is on a box level.

2 That's a box-level number.

3 A. No, it's a file-level number.

4 Q. So what you're saying is none of those box-level  
5 numbers contain file information?

6 A. You're asking me if the number of the box  
7 contains file information?

8 Q. No, no, no, no, no. I'm asking you if the sheet  
9 for this box --

10 A. The sheet of the big stack of sheets we got.

11 Q. Yeah.

12 A. Okay.

13 Q. The one sheet out of that big stack of sheets or  
14 however many sheets you had made for this box, if I  
15 were to look on that sheet, I'd see something about  
16 file number one in that box.

17 A. Okay. So you're asking me a question which goes  
18 to the content of those sheets of paper we have put  
19 together.

20 Q. Yes.

21 THE WITNESS: Can I answer a question as to  
22 the contents of the sheets of those paper?

23 MS. YELENICK: No, you cannot.

24 Q. You can't tell me whether objective information  
25 concerning this file was put on this sheet.

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- 1 A. The sheet was designed --
- 2 Q. Let's put it this way, let me ask it this way.
- 3 A. Okay.
- 4 Q. Was objective information --
- 5 Do you understand what "objective" means?
- 6 A. I have a rough understanding.
- 7 Q. Was information taken straight from this file
- 8 placed on that box sheet concerning this file, file
- 9 number one?
- 10 A. You're -- you're asking me for the type of
- 11 information contained -- contained on the sheet.
- 12 Q. Exactly, the type of information. I'm not
- 13 asking you for the exact information, I'm asking you
- 14 for the type of information.
- 15 THE WITNESS: Can I answer that question?
- 16 MS. YELENICK: No. Work product.
- 17 Q. You can't answer that question. You can't even
- 18 tell me whether it was subjective information that
- 19 you decided to produce or whether it was objective
- 20 information that was nothing more a recordation of
- 21 what was physically already on the file.
- 22 A. As I previously testified, the contents of these
- 23 sheets was determined by attorneys in light of their
- 24 representation of the client and litigation concerns
- 25 and such things like that.

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1 Q. Look at Exhibit 29. See the front page of that  
2 document?

3 A. Yes, I do.

4 Q. See where it says "Organizational Chart" at the  
5 top?

6 A. Yes, I do.

7 Q. Do you think an attorney wrote that?

8 A. I don't know who wrote that.

9 MS. YELENICK: Objection to form.

10 Q. Chances are an attorney didn't write that;  
11 correct?

12 Now isn't --

13 A. I would -- I would assume not. I don't know.

14 Q. Isn't it your experience as you've looked  
15 through The American Tobacco Company files that most  
16 of the individuals that maintain files at American  
17 Tobacco actually labeled those files in some fashion?

18 A. I --

19 It's probably fair to say that people who  
20 maintain files label them.

21 Q. Okay.

22 A. And those people can be attorneys and  
23 non-attorneys.

24 Q. But as to the non-attorneys, they didn't need to  
25 talk to an attorney to figure out how to label that

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1 file now; did they?

2 A. I don't know what their thought process was. I  
3 can't speculate.

4 Q. And it certainly doesn't take someone with a law  
5 degree to transfer the information on that file to  
6 another piece of paper now; does it?

7 MS. YELENICK: Objection to form.

8 A. Again, you're asking --

9 THE WITNESS: Could you repeat the  
10 question?

11 (Record read by the court reporter.)

12 THE WITNESS: Can I answer that question?

13 MS. YELENICK: Objection to form.

14 A. I'm a little -- I'm trying to follow your  
15 question. Is there -- is there a straightforward way  
16 you can ask me exactly what you're asking me?

17 Q. I think I did.

18 A. All right.

19 THE WITNESS: I hate to do this. Could you  
20 repeat the question for me?

21 (Record read by the court reporter.)

22 MS. YELENICK: Same objection to form.

23 A. If -- if you're asking me can a non-attorney  
24 take a piece of information from one document and  
25 write it on to another document, I would say it does

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1 not take an attorney to do that.

2 Q. Okay. And were there any instances in which  
3 that was actually done when you were constructing  
4 these box lists; that is, objective information that  
5 was already sitting on a file that no attorney had  
6 placed on that file was physically taken directly  
7 from that file and placed on another piece of paper  
8 regarding that file?

9 MS. YELENICK: Objection, work product.

10 Contents of any such collection is work product.

11 Q. So once again objective information sitting on  
12 the top of a file folder, if somehow an attorney  
13 looks at that and takes that information and records  
14 it on another piece of paper, it's The American  
15 Tobacco Company's opinion that that constitutes work  
16 product.

17 MS. YELENICK: Objection stands.

18 A. Based on the --

19 Q. And you're not going to answer my question;  
20 correct?

21 A. I -- I cannot answer any question to which there  
22 has been a privilege objection raised.

23 Q. You're an attorney; correct?

24 A. I am.

25 Q. Sure.

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1 A. Yes, I am.

2 Q. You can probably make that determination all by  
3 yourself; right?

4 MS. YELENICK: Objection.

5 A. I have no reason to make a determination  
6 contrary to the determination of my counsel.

7 Q. Let's go back to the legal files that are  
8 sitting in Old Greenwich, Connecticut. Now those are  
9 still active files, some of them; correct?

10 A. I'm not clear what files you're talking about  
11 now.

12 Q. Okay. Let's put aside the Bronkville facility  
13 where files are warehoused. I'm now talking about  
14 the files inside the legal department of American  
15 Brands.

16 A. Again, which -- which files are you talking  
17 about?

18 Q. That's what we're going to get to.

19 A. Okay.

20 Q. For right now I'm talking about all the files at  
21 American Brands; correct?

22 A. I assume that's what you're talking about.

23 Q. Okay.

24 A. Okay.

25 Q. We talked before that basically what you did in

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1 February of 1995 is Chadbourne & Parke attorneys went  
2 through and divided those files into American Tobacco  
3 Company files and non-American Tobacco Company files;  
4 correct?

5 A. I believe what I said was Chadbourne & Parke  
6 attorneys, in connection with AB personnel, went  
7 through and identified which materials were American  
8 Tobacco Company files.

9 Q. Well, and in the process of doing that, of  
10 course, you're saying that everything else is not  
11 American Tobacco Company files; correct?

12 A. No, we identified which ones were. I mean --  
13 I think it's a semantic difference.

14 Q. It's a logical conclusion; isn't it?

15 A. Yeah, we identified which ones were.

16 Q. Okay. And then you took that group that you  
17 identified as American Tobacco Company files and you  
18 then did a review of that; correct?

19 A. I -- I believe they were reviewed.

20 Q. Okay. And was that group of documents divided  
21 into documents to be retained at Chadbourne & Parke  
22 and documents to be destroyed?

23 A. I'm not aware of -- of whether any of those were  
24 to be destroyed.

25 Q. Okay. So were all the documents that you

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1 identified at that time retained at Chadbourne Parke?

2 A. I don't know that for a fact. I'm not aware of  
3 any legal department files that related to The  
4 American Tobacco Company which were destroyed.

5 Q. Okay. Are you aware of any legal files at The  
6 American Tobacco Company or that you determined were  
7 related to The American Tobacco Company that were  
8 forwarded to Brown & Williamson?

9 A. I don't know whether or not that was done. It  
10 might have been done. I don't know.

11 Q. Who would know that?

12 A. Again, I -- I -- I don't know who would -- who  
13 would have sent it and who would have received it.

14 Q. At any time after that review --

15 And when was that review completed, do you  
16 recall?

17 A. The review at American Brands?

18 Q. At their legal department.

19 A. I don't know precisely when that was. I believe  
20 all these reviews took place January and February of  
21 1995. I mean it -- I believe to some degree some of  
22 that went on for a while, but I don't know when  
23 exactly the process --

24 Q. After this review we've been talking about that  
25 took place in January and February of 1995, did any

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1 Chadbourne & Parke attorneys ever go back to American  
2 Brands legal department and take another look through  
3 the other documents, the documents still remaining  
4 there that were not originally identified as American  
5 Tobacco Company documents to determine if there were  
6 in fact responsive documents in those files?

7 MS. YELENICK: Objection to form.

8 THE WITNESS: That was a very, very long  
9 question. Could -- could you please read back that  
10 question?

11 (Record read by the court reporter.)

12 A. I'm having trouble with that question. I'm just  
13 trying to --

14 Q. Well let me try to break it down.

15 A. Okay. Thank you.

16 Q. We've identified that there's a group of  
17 documents that stayed at the American Brands legal,  
18 files that had been determined originally in January  
19 and February of 1995 not to be American Tobacco  
20 Company documents; correct?

21 A. I mean there were some that were determined to  
22 be. The balance would not be. I --

23 Q. Look, let's not play semantic games.

24 A. I'm not trying to. I'm trying to be specific.

25 But our search -- our search was for documents that

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1 related to The American Tobacco Company, and that was  
2 what our focus was.

3 Q. Right. And so by necessity, I mean it's just  
4 pure logic that any document -- any documents left  
5 are documents that when you went through the first  
6 time you determined were not American Tobacco Company  
7 documents; correct?

8 A. That is -- that is correct.

9 Q. Okay. And you don't seem to want to give me  
10 that logic.

11 A. I'm just --

12 Q. You're concerned about my questions.

13 A. We're both involved in a profession where  
14 precision of language is important, and I want to  
15 make sure that I am stating accurate things and not  
16 misstating things.

17 Q. Okay.

18 A. That's all I'm doing.

19 Q. There's a fine line between precision in  
20 language and playing word games.

21 A. I am not trying to play any games with you.

22 Q. I asked you a long question in large part  
23 because every time I don't ask you a long question,  
24 you object to it and want more precision and want  
25 more definition. I've tried to make this as easy as

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1 possible by stating there's a group of documents that  
2 are American Tobacco Company documents that you took  
3 out and looked at --

4 A. Right.

5 Q. -- and that those remaining were not.

6 A. Were not determined to be American Tobacco.

7 Okay. That's fine.

8 Q. Okay. Have we got that all clear now?

9 A. I believe we do.

10 Q. Did anyone ever go back and look at those  
11 documents now remaining at the American Brands legal  
12 department after the January, February 1995 review to  
13 determine if there were any documents in those files  
14 that were responsive to Minnesota's document  
15 requests?

16 A. All right. Now you're asking me about  
17 responsiveness to the Minnesota requests in  
18 particular.

19 Q. Yes.

20 A. I am not aware of an additional search of those  
21 other files for the Minnesota requests.

22 Q. Was there an additional search of those files  
23 for any other state's litigation requests?

24 MS. YELENICK: Objection, beyond the  
25 scope.

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1 THE WITNESS: Can I answer that?

2 MS. YELENICK: Yes, you can answer that.

3 A. I am not aware of any additional searches

4 specific to any other document requests.

5 Q. So in other words, since January and February of  
6 1995 no one representing American Tobacco Company in  
7 litigation has went back into the American Brands  
8 legal department and looked through those files to  
9 determine if there are any responsive documents to  
10 any litigation requests pending.

11 MS. YELENICK: Objection, mischaracterizing  
12 the testimony.

13 A. I don't think that's what I said.

14 Q. Well why don't you tell me where it's wrong.

15 A. That's an interesting way of phrasing the  
16 question.

17 THE WITNESS: Could you repeat the question  
18 that he's asking me to see if I need to correct?

19 (Record read by the court reporter.)

20 A. Trying to follow all that. This is one of those  
21 long questions you were talking about.

22 Q. But not really that hard to understand,  
23 especially with your Michigan education. I  
24 understand it.

25 A. I knew that was coming back to haunt me.

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1           My understanding is that following January, the  
2   January and February work, I believe that's when the  
3   work was done, that additional materials regarding  
4   The American Tobacco Company were identified and  
5   forwarded for review.

6   Q.   When were those initial -- those additional  
7   documents identified?

8   A.   I don't recall specifically. I know that  
9   they -- that that has been the case.

10   Q.   Who identified those initial -- additional  
11   documents?

12   A.   I don't know who identified them. I know that  
13   there has been notification that additional materials  
14   have been located and they have been forwarded to us.

15   Q.   When did you first receive that notification?

16   A.   Again, I don't know when I first received that  
17   notification, but at some point in time following the  
18   review we talked about, additional material -- we  
19   were advised of the existence of additional American  
20   Tobacco materials. Those materials were forwarded to  
21   us and those materials have been added to the  
22   universe of American Tobacco materials that we review  
23   for production, such as the production in this case.

24   Q.   When did you receive those additional materials?

25   A.   I would --

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1           We would have received them shortly after we  
2   received the notice I talked about.

3   Q.    I know that.

4   A.    Well that's -- that's the --

5   Q.    But I've asked you now a couple times for the  
6   timeframe of the notice.  When did you get the  
7   notice?

8   A.    I --

9           Again, I believe we received such notice on more  
10   than one occasion.  I don't remember the time  
11   precisely.

12   Q.    Well okay.  You realize at this point I'm going  
13   to ask you for the times and dates of every  
14   additional notice you've received, so let's -- let's  
15   start through them and -- and let's talk about them.

16           When's the first time you received an additional  
17   notice of additional documents having been located?

18   A.    I don't remember when that was.

19   Q.    Give me an approximation.

20   A.    Again, I don't remember the first time after our  
21   review that that took place.

22   Q.    An approximation.  I need an approximate date.

23   A.    I can't -- I can't --

24           Sometime between then and today.  I can't --

25   Q.    Well I figured this out all on my own.  But

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1 when?

2 A. Seriously, I cannot -- I don't know --

3 Q. Even more seriously, I need that information. I  
4 need to know when additional documents have come out  
5 of American Brands that have now been determined to  
6 be responsive or -- or property of American Tobacco.  
7 I need to know that information. I need to know each  
8 and every transfer.

9 We have asked you folks transfer-of-documents  
10 requests. You're telling me that you went through  
11 documents and you looked for documents and you  
12 determined, hey, these are The American Tobacco  
13 documents. Now you're saying on a rolling basis  
14 you've been getting additional documents in. I want  
15 to know when they came in. I want to know who they  
16 came from. And I want to know who decided they were  
17 responsive.

18 MS. YELENICK: Objection to form.

19 Q. So let's ask it first: When did you receive  
20 approximately the first notification?

21 A. I don't remember when that was.

22 Q. Was it a month -- a month ago?

23 A. It was more than a month ago.

24 Q. Was it six months ago?

25 A. When we did the --

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1           It could have been more than six months ago.

2   Q.   Was it nine months ago?

3   A.   Again, I don't know precisely when. We talked

4   about the review being done in January and February

5   of 1995. I don't know whether we received such

6   notification in 1995. That's possible. I -- I

7   believe we received such notification in 1996.

8   Q.   And you've received more than one such

9   notification; correct?

10   A.   Yes.

11   Q.   How many notifications have you received?

12   A.   I don't know what the total number was.

13   Q.   Give me a -- give me a ballpark.

14           More than five?

15   A.   I don't know if it's more than five.

16   Q.   Less than five?

17   A.   I don't -- I don't know. I know it's more than

18   one and I would imagine it's less than 10.

19   Q.   So it's more than one and less than 10.

20           When did you receive the last such notification?

21   A.   I believe it would have been earlier this year.

22   Q.   Earlier in 1997.

23   A.   That's correct.

24   Q.   And how many boxes were shipped to you with that

25   notification?

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- 1 A. I don't remember.
- 2 Q. Give me a ballpark.
- 3 A. Maybe ten.
- 4 Q. And where were those boxes shipped from?
- 5 A. They were shipped from American Brands.
- 6 Q. Were all the notifications that we've talked
- 7 about notifications from American Brands to you
- 8 telling you that American Brands had additional
- 9 responsive documents?
- 10 A. I believe that that is the case in at least
- 11 several of the occasions.
- 12 Q. Is there any other entity that sent you similar
- 13 notifications?
- 14 A. No. No.
- 15 Q. So American Brands is the only other entity that
- 16 has sent additional American Tobacco Company
- 17 documents to Chadbourne & Parke; correct?
- 18 A. I believe that -- I believe that's correct.
- 19 Q. Approximately how many such boxes of documents
- 20 have you received in the last two years from American
- 21 Brands?
- 22 A. Again, I -- it would just be estimating.
- 23 Perhaps 120.
- 24 Q. Did American Brands independently determine that
- 25 these documents were American Tobacco Company

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1 documents?

2 A. I -- I believe that that is the case.

3 Q. So in other words, there wasn't some request  
4 from Chadbourne & Parke to American Brands saying  
5 would you go back through your documents to see if  
6 you have any more American Tobacco Company  
7 documents.

8 MS. YELENICK: Objection to form.

9 A. You're asking for an attorney-client  
10 communication.

11 Q. I don't believe so.

12 A. You're asking if Chadbourne asked American  
13 Brands --

14 Q. Do you represent American Brands?

15 A. Yes.

16 Q. Okay. Is American Brands a defendant in this  
17 case?

18 A. No.

19 Q. Were you communicating in your legal capacity as  
20 an attorney representing American Brands when you  
21 made the request?

22 A. Now you're asking me for a legal conclusion.

23 I'm not --

24 Q. No, I'm asking you for a fact.

25 A. I'm --

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1           Could you repeat the question?

2   Q.   Certainly.

3           When you called up American Brands -- and again,  
4   I don't know if you have or not because you haven't  
5   answered that question.

6   A.   Uh-huh.

7   Q.   But when you --

8           If you would have called up American Brands and  
9   said do you have any more American Tobacco Company  
10  documents, at that time you would have been acting as  
11  an attorney for American Tobacco Company, not  
12  American Brands; correct?

13           MS. YELENICK:  Calls for speculation.

14  A.   I don't -- I -- I don't know.

15  Q.   Did you ever make any such phone call?

16  A.   Such phone call asking for specifically what?

17  Q.   Did anybody from Chadbourne & Parke in their  
18  capacity of representing American Tobacco Company  
19  call American Brands and say, hey, would you go guys  
20  go back through to see if you have any more American  
21  Tobacco Company documents?  Or did American -- did  
22  the American Brands company independently determine  
23  that these were American Tobacco Company documents  
24  and just send them on along to you?

25  A.   My understanding is that at the time of the

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1 sale, documents relating to The American Tobacco  
2 Company were transferred to Brown & Williamson  
3 pursuant to the sale. It's also my understanding  
4 that there have been occasions where additional  
5 materials relating to The American Tobacco Company  
6 were located by American Brands. In such situation  
7 we were notified of the existence of those materials,  
8 they were promptly forwarded to us, and they were  
9 added to the universe which we reviewed for  
10 production in this case.

11 Q. And that determination by American Brands was an  
12 independent determination that American Brands made,  
13 not something they were asked to do by Chadbourne &  
14 Parke; correct?

15 A. Well it's difficult to answer that question.

16 Pursuant to -- as I said, pursuant to the sale,  
17 those materials were to be transferred. The  
18 assessment or the --

19 When there is a recognition that there is some  
20 additional American Tobacco records, those are  
21 forwarded to us because those files are to be  
22 transferred to Brown & Williamson.

23 Q. So American Brands has an ongoing obligation to  
24 give to Chadbourne & Parke any document it discovers  
25 as it goes through its day-to-day activity that may

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1 be related to The American Tobacco Company; correct?

2 A. I don't -- I don't know what obligations  
3 American Brands has. I would answer the question  
4 this way: To the extent -- and these are unusual  
5 circumstances -- when American, as I understand it,  
6 American Tobacco files are located in -- in --  
7 anywhere, just happen to be located, then we are  
8 promptly notified and those materials are -- are  
9 transferred. Again, I don't --

10 You know, my understanding is that these  
11 materials we're talking about are probably  
12 duplicative materials we already have, but this is  
13 the scenario I'm -- I'm talking about.

14 Q. Well how do you know that? How do you know  
15 they're duplicative?

16 A. I -- I believe they are. I mean I have --  
17 It is my understanding that to some degree those  
18 files are duplicative.

19 Q. Did somebody go through and make sure though?

20 A. These files are added, as I indicated, to our  
21 universe of American Tobacco documents, and whether  
22 they are duplicative or not, they are reviewed for  
23 the purposes of production in this case.

24 Q. How many such boxes of documents are still in  
25 the pipeline for review and production in this

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- 1 Minnesota litigation?
- 2 A. I'm not sure what you mean by "such boxes."
- 3 Q. Boxes that have been subsequently transferred
- 4 from American Brands to American Tobacco.
- 5 A. That I don't know.
- 6 Q. What would be your best estimate?
- 7 A. Few.
- 8 Q. You said you received 10 earlier this year. I
- 9 assume those 10 haven't been reviewed and produced
- 10 yet; correct?
- 11 A. I don't know what the status of those is.
- 12 Again, they are promptly sent to us and we promptly
- 13 review them. I don't know whether they have been
- 14 completed or not.
- 15 Q. When's the last time you produced documents into
- 16 the depository here in Minnesota?
- 17 A. I believe we produced documents most recently
- 18 last month, to the best of my recollection.
- 19 Q. Would that be the documents you received from
- 20 American Brands?
- 21 A. Again, I don't recall precisely what was
- 22 involved in that particular production.
- 23 Q. It's my understanding you've still got 20 to 30
- 24 thousand pages of documents in the pipeline for the
- 25 privilege review. Are these documents part and

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1 parcel of that group of documents or not?

2 A. I believe that some of the documents we received  
3 subsequent to the January and February 1995 period  
4 from American Brands would be included within some of  
5 the documents which we are currently reviewing for  
6 privilege.

7 Q. Okay. Just so we can clarify that, you've got  
8 20 or 30 thousand pages of documents you're currently  
9 reviewing for privilege. Do you have other  
10 documents --

11 A. I mean that again is an estimate. I'm --

12 Q. I understand that. But you are the person who  
13 would have the best knowledge of that; correct?

14 A. I have -- I have knowledge of that. I don't  
15 know that anybody knows the precise number, but I'm  
16 just --

17 It's an estimate.

18 Q. Well when the court asks you, you know,  
19 "American, how many documents do you have in the  
20 pipeline?" you'd give the court the same answer you  
21 gave me today; right?

22 A. My estimate is -- is the estimate of pages which  
23 I've given to you.

24 Q. Aside from those pages of documents that are in  
25 the pipeline for privilege review, how many pages of

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1 documents are in the pipeline for other production in  
2 the normal course? In other words, are there still  
3 documents that have yet to be reduced -- reviewed for  
4 any production in this case?

5 A. That I don't know the answer to. I don't -- I  
6 don't know whether there are any such documents that  
7 fall into that classification.

8 Q. There may be. You're just not sure?

9 A. I -- I -- I don't know. I don't know. I don't  
10 know whether we completed the review I talked about  
11 with regard to the most recent boxes we received.

12 Q. What departments from American Brands have these  
13 additional documents come from?

14 A. That I don't know. I know --

15 Q. Has it been more than just the legal department?

16 A. I -- I don't know which departments.

17 Q. Who would know that?

18 A. Which department or departments? The person who  
19 might know that would be the person who sent them to  
20 me.

21 Q. And who was that person?

22 A. Andy Rak.

23 Q. Have copies of that correspondence been produced  
24 to the depository?

25 A. Copies of what correspondence?

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1 Q. Correspondence from Andy Rak containing these  
2 additional documents.

3 MS. YELENICK: Objection to form.

4 A. You're assuming that there was any  
5 correspondence.

6 Q. He didn't send a correspondence along with the  
7 boxes of documents?

8 A. With the documents I have received a piece of  
9 paper on each occasion memorializing the fact that  
10 documents were sent.

11 Q. And have those pieces of paper been produced to  
12 the Minnesota depository?

13 A. To the best of my knowledge, those documents are  
14 not called for by the production -- or the requests  
15 in this case.

16 Q. Are those pieces of paper signed by Mr. Rak?

17 A. I honestly don't know if they are or not. I  
18 typically sign them. There's a line for me to sign  
19 on them.

20 Q. But there's a line for you to sign to  
21 acknowledge that you've received the boxes?

22 A. That's correct.

23 Q. You said something about receiving a  
24 notification prior to the actual boxes being sent.  
25 What's in the notification?

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- 1 A. Normally it's a telephone call.
- 2 Q. So Mr. Rak calls you up and says, hey, I've got
- 3 a few documents that are American Tobacco Company
- 4 documents. I'm going to be sending them to you.
- 5 A. Basically that is the conversation.
- 6 Q. He doesn't follow that up with a letter.
- 7 A. As I indicated, he then promptly sends me the
- 8 material with a letter which I sign acknowledging
- 9 receipt on behalf of Brown & Williamson.
- 10 Q. Do you keep a copy of that receipt?
- 11 A. Yes, I do.
- 12 Q. What information is contained on that receipt?
- 13 A. I believe the --
- 14 MS. YELENICK: Just a minute.
- 15 THE WITNESS: Sorry.
- 16 MS. YELENICK: Just a minute.
- 17 You can answer that question.
- 18 A. My answer is that the document bears the date
- 19 which the materials were sent to me, indicates the
- 20 number of boxes sent, and I've indicated it has a
- 21 line for me to sign signifying receipt.
- 22 Q. Is there any description on that notification or
- 23 the receipt describing the contents of the boxes?
- 24 A. I don't recall that there is any such
- 25 description on those sheets.

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1 Q. Does it state the location from which the  
2 documents were collected?

3 A. Other than American Brands, no.

4 Q. So I'd have to ask Mr. Rak exactly where he  
5 found those documents; correct?

6 A. I don't have that --

7 MS. YELENICK: Objection to form.

8 A. I don't have that information. I don't know  
9 where they're from.

10 Q. Have you ever called Mr. Rak and asked him to  
11 look for smoking and health research from  
12 Gallaher's?

13 MS. YELENICK: Objection, beyond the  
14 scope.

15 THE WITNESS: Can I answer that?

16 MS. YELENICK: No. Work product,  
17 attorney-client privilege.

18 MR. O'FALLON: Ah, wonderful.

19 Q. Mr. Rak doesn't represent American Tobacco; does  
20 he?

21 A. You're speaking today?

22 Q. Yeah.

23 A. My understanding is that today he does not  
24 represent American Tobacco.

25 Q. Okay. And American Brands isn't currently a

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1 defendant in this case; isn't that correct?

2 A. That is also correct.

3 Q. And you, when you would call him in that  
4 capacity asking for Gallaher's documents for the  
5 purpose of producing them potentially in this  
6 litigation, you would be representing American  
7 Tobacco Company, or more precisely you'd be  
8 representing B&W; correct?

9 MS. YELENICK: What time period, counsel?

10 MR. O'FALLON: Post-December of 1994.

11 THE WITNESS: Can I answer that question?

12 MS. YELENICK: Uh-huh.

13 THE WITNESS: Could you please read it  
14 back.

15 (Record read by the court reporter.)

16 A. I've never asked Mr. Rak for Gallaher documents.

17 Q. Has any Chadbourne & Parke attorney ever asked  
18 Mr. Rak for Gallaher documents?

19 A. I have no idea whatsoever.

20 Q. Has any attorney representing American Tobacco  
21 Corporation in the Minnesota litigation ever asked  
22 Mr. Rak to go through American Brands' files for  
23 Gallaher documents?

24 A. I don't know. I never have.

25 Q. Well speaking on behalf of American Brands, is

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1 your answer the same?

2 A. Speaking on behalf of American Brands?

3 Q. Sorry. Speaking on behalf of American Tobacco,

4 is your answer the same?

5 A. The same as to what?

6 Q. To the question I just asked you.

7 MS. YELENICK: Objection to form.

8 A. Ask me a --

9 Q. I'm asking you --

10 A. If you'd just ask me a straight question, I'll

11 give you a straight answer.

12 Q. As a representative of American Tobacco, has any

13 representative of American Tobacco ever contacted Mr.

14 Rak and asked -- asked that he or someone at American

15 Brands search American Brands' files for Gallaher's

16 research documents relating to smoking and health

17 after December of 1994?

18 MS. YELENICK: Objection to form.

19 You can answer.

20 A. I don't know.

21 Q. Is there anybody else besides you who would have

22 that information?

23 A. I don't know.

24 Q. This whole line of questions really started when

25 I was asking about the group of documents in the

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1 legal department that had been separated out as not  
2 relating to American Tobacco, and I believe what I  
3 started to ask you at that point in time is whether  
4 anyone from Chadbourne & Parke or any other attorney  
5 representing American Tobacco has went back through  
6 those documents to determine if there are responsive  
7 documents for the Minnesota litigation.

8 MS. YELENICK: Objection to form.

9 THE WITNESS: Could you repeat that  
10 question, please? Sorry.

11 (Record read by the court reporter.)

12 MS. YELENICK: Objection to form.

13 A. I'm -- I'm unaware of any occasions like that.

14 And -- and I answered that question that way with my  
15 understanding that you're talking about subsequent to  
16 the requests in this case being served.

17 Q. Yes.

18 A. Okay.

19 Q. Was there some search done prior to the time the  
20 requests in this case were served?

21 A. Now you're speaking of --

22 MS. YELENICK: Beyond the scope.

23 A. You're speaking at any time prior to the --

24 Q. Well once again, you know, we can make this  
25 process as easy or as hard as you want.

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1 A. I'm trying to streamline the process. I just  
2 want to make sure about the question I'm being asked  
3 so I don't give you an answer that's inaccurate.

4 Q. We've been discussing the document review that  
5 you did in February of 1995.

6 A. January and February. And I believe the -- the  
7 legal department review was done approximately that  
8 time as well.

9 Q. Your additional comments really don't help  
10 streamline the questioning.

11 A. I'm just trying -- just trying to help. Okay.

12 Q. Well the way you can be the most help is  
13 listening to my questions and asking them -- and  
14 answering them when I ask them. But let me go back  
15 and rephrase.

16 Between the time that Chadbourne & Parke did its  
17 document review in January and February in 1995 and  
18 the time Minnesota served its requests for production  
19 of documents, did any attorneys representing The  
20 American Tobacco Company go back through the legal  
21 department files in Old Greenwich, Connecticut?

22 A. For any purpose?

23 Q. For the purposes of looking for documents that  
24 would ultimately be responsive to requests in smoking  
25 and health litigation.

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1 A. I don't believe so.

2 Q. Just so the record is clear, the Minnesota  
3 document requests are not the first document requests  
4 you've seen regarding smoking and health since  
5 January and February of 1995; are they?

6 A. You're asking me were there other document  
7 requests after December -- January -- after January  
8 and February 1995?

9 Q. Well I'm actually asking you the question I  
10 asked you, but if that's how you want to interpret  
11 it, --

12 A. I'm really trying to understand it.

13 Q. -- why don't you -- why don't you answer your  
14 question.

15 A. I believe that there has been document requests  
16 in other cases addressed to The American Tobacco  
17 Company after January or February 1995.

18 Q. How many other states are currently suing  
19 American Tobacco?

20 MS. YELENICK: Objection, beyond the scope  
21 of the notice.

22 A. I don't know the exact number. I -- I believe  
23 it's something like 20.

24 Q. Is The American Tobacco Company producing  
25 documents to those other states in addition to

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1 Minnesota?

2 MS. YELENICK: Objection, beyond the scope.

3 A. American Tobacco Company is producing documents  
4 in cases where there have been document requests  
5 filed pursuant to its obligations in -- in a given  
6 jurisdiction.

7 Q. I believe you've made representations in the  
8 past that something like 174 attorneys and staff are  
9 working on the production of documents. Is that  
10 referring to specifically the Minnesota litigation,  
11 or is that referring to all the various litigation  
12 that's currently pending against American Tobacco  
13 Company?

14 MS. YELENICK: Objection to form.

15 THE WITNESS: Could you read that question  
16 back, please.

17 (Record read by the court reporter.)

18 A. That question is a little confusing, so let me  
19 answer it this way: For the production of documents  
20 in this case, in response to the 150 requests which  
21 were served on American in this case, and given the  
22 requirement that we prepare a 4B index for the  
23 plaintiffs' use in this case, American committed  
24 extraordinary resources which included the  
25 expenditure of literally millions and millions of

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1 dollars and the use of in excess of 200 attorneys,  
2 paralegals, and support staff to comply with its  
3 obligations in this case.

4 Q. Has the work product that has been done for this  
5 case; that is, the 4B indexes, been made available to  
6 plaintiffs in other states?

7 MS. YELENICK: Objection, beyond the scope.

8 THE WITNESS: Can I answer that?

9 MS. YELENICK: You can answer that.

10 A. My understanding, to the best of my -- of my  
11 knowledge, is that the 4B index I believe has been  
12 made available to plaintiffs in -- in one or more  
13 other cases.

14 Q. How many?

15 A. I don't know the exact number.

16 Q. So the work you did for the Minnesota litigation  
17 has also benefited you in other litigation; correct?

18 MS. YELENICK: Objection to form.

19 A. I cannot think of any way in which the work that  
20 American has done in connection with this litigation  
21 has benefited it in any way.

22 Q. Oh, really.

23 A. It was a herculean effort and it required a  
24 tremendous expenditure of resources.

25 Q. You don't think complying with court orders

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1 benefits a corporation?

2 MS. YELENICK: Objection to form.

3 A. That's an argumentative question, in my mind.

4 Q. Well you see, you're not the lawyer here. She  
5 is.

6 A. Well I think -- I think you're -- you're --  
7 you're arguing with me. I mean I think complying  
8 with court orders is an obligation of any party in  
9 litigation. I'm just telling you that you've asked  
10 me if having committed this huge amount of resources  
11 and time to a project such as this has benefited  
12 the -- the company, and I'm telling you that it was a  
13 tremendous burden on the company and I don't view it  
14 personally as a benefit in any way.

15 Q. Of course the company doesn't exist; right?

16 A. We represent The American Tobacco Company.  
17 Brown & Williamson is successor to The American  
18 Tobacco Company --

19 Q. And at the time --

20 A. -- and --

21 Q. Oh, I'm sorry.

22 A. -- and has had to expend the resources that I've  
23 described to you.

24 Q. And at the time that Brown & Williamson and/or  
25 its parent corporation, B.A.T. Industries, bought

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1 American Tobacco Company, B.A.T. knew that this  
2 particular piece of litigation, the Minnesota  
3 litigation, had been filed against American Tobacco;  
4 didn't it?

5 MS. YELENICK: Objection, calls for  
6 speculation.

7 A. I don't know what B.A.T. knew or did not know.  
8 Certainly prior to the filing of the over-broad  
9 requests in this case, nobody knew that overbroad  
10 requests would be filed.

11 Q. Did the court determine our requests were  
12 overbroad, sir?

13 A. I don't know. I don't know what the answer to  
14 that question is.

15 Q. You're a lawyer in this case; right?

16 MS. YELENICK: Objection.

17 A. Yes, I am a lawyer in this case.

18 Q. Well then answer the question. Are you  
19 asking --

20 MS. YELENICK: Objection.

21 A. Are you asking me if I believe the requests in  
22 this case are overbroad --

23 Q. Yes.

24 A. -- personally?

25 Q. Sure, as a representative of the American

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1 Tobacco Company.

2 MS. YELENICK: Beyond the scope.

3 Objection.

4 A. My belief is that the requests in this case are  
5 overbroad. They have -- can I finish my answer?  
6 They have called for the production of in excess of  
7 2.7 million pages of American's documents, and the  
8 best evidence in my mind of the overbroad nature of  
9 those requests is the fact, which I find incredible,  
10 that the plaintiffs have only copied something in the  
11 nature of one percent of those documents, telling me  
12 that the plaintiffs recognize that their requests  
13 were overbroad.

14 Q. Are you finished?

15 A. I've answered your question.

16 Q. Have you chosen, as a lawyer for American  
17 Tobacco, to interpret those requests a lot more  
18 narrowly than they were worded?

19 MS. YELENICK: Objection.

20 A. I don't understand your question.

21 Q. What don't you understand about my question?

22 A. I don't understand any of it.

23 Q. You don't understand any of that question?

24 A. I don't.

25 Q. Why don't we repeat it and see if, on rehearing

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1 it, you can understand it.

2 A. Can you repeat the question, please.

3 (Record read by the court reporter.)

4 MS. YELENICK: Objection to form.

5 A. I still don't understand the question. We  
6 interpreted the requests in a reasonable manner.

7 Q. Narrowly or broadly?

8 A. Reasonably.

9 Q. Narrowly or broadly?

10 MS. YELENICK: Asked and answered.

11 Q. Did you interpret them consistent with your  
12 personal view about them?

13 MS. YELENICK: Objection.

14 A. I interpreted --

15 We interpreted them, speaking on behalf of the  
16 company, consistent with the law.

17 Q. The law in the state of Minnesota?

18 A. The applicable law in this case.

19 Q. Do you interpret the law concerning production  
20 kind of like you interpret the law concerning work  
21 product?

22 MS. YELENICK: Objection.

23 A. I don't know how to answer a question like  
24 that. You're asking me now personally.

25 Q. As The American Tobacco Company.

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1 A. You're asking me, as The American Tobacco  
2 Company, do I interpret the law of privilege the way  
3 I interpret the law of responsiveness.

4 Q. Do you take the same approach?

5 MS. YELENICK: Objection.

6 A. I follow -- I follow --

7 We follow applicable legal guidelines in both  
8 cases.

9 Q. Have we now talked about every location in which  
10 American Tobacco documents were looked for in January  
11 and February of 1995?

12 A. I believe we've gone through the list, as I  
13 understand it.

14 Q. So it would be your testimony that there are no  
15 other locations that American Tobacco Company  
16 documents were looked for in January and February of  
17 1995.

18 MS. YELENICK: Objection to form.

19 THE WITNESS: Could you repeat the  
20 question, please.

21 (Record read by the court reporter.)

22 A. Looked for by whom?

23 Q. Did people other than Chadbourne & Parke and  
24 King & Spalding go out and look for American Tobacco  
25 Company documents?

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1 A. Well as I indicated, to some degree company  
2 personnel assisted in that process. Are you asking  
3 me other than company personnel, Chadbourne & Parke  
4 and Brown & Williamson personnel?

5 Q. Sure.

6 THE WITNESS: Could you please repeat the  
7 underlying question? Thank you.

8 (Record read by the court reporter.)

9 MS. YELENICK: Objection. Other than what,  
10 counsel?

11 MR. O'FALLON: Can you answer?

12 A. I would say the same thing. Other than what?

13 Q. Well you didn't say that previously, so why  
14 would you say that now?

15 A. I raised a question about your question before.  
16 You qualified it. It's now been read back, and now  
17 we've asked an additional question about it. Are you  
18 suggesting that's somehow inconsistent?

19 Q. Well I'm just suggesting it's really not that  
20 difficult a question to answer. So again, what about  
21 my question don't you really seem to understand?

22 A. Well I identified two things. One you  
23 clarified, one you didn't.

24 Q. Which didn't I clarify?

25 A. I believe the second thing I raised. I've now

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1 forgotten the entire question.

2 Q. Which is now what?

3 A. The second --

4 Q. Well it's rather -- it's rather convenient for  
5 you to now forget the entire question. Why don't we  
6 go back and have the whole thing read.

7 A. That would be fine.

8 (Record read by the court reporter.)

9 Q. By somebody representing or an employee of The  
10 American Tobacco Company.

11 A. That is my understanding.

12 Q. And our document requests were served when?

13 A. I would like to refer to the document itself to  
14 verify the date of that. I don't remember it  
15 precisely. My recollection is that the document  
16 requests in this case were served June, July,  
17 something like that.

18 Q. Well you said you wanted to refer to the  
19 document. It's sitting in front you currently; isn't  
20 it?

21 A. Exhibit 30? Exhibit 30 is dated June 19th,  
22 1995.

23 Q. As of June 19th there were American Tobacco  
24 Company documents at Brown & Williamson and at  
25 Chadbourne Parke; correct?

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1 A. That is correct.

2 Q. There were also certain files that American  
3 Tobacco may or may not at that point in time have  
4 determined were American Tobacco Company files;  
5 correct?

6 A. I'm confused by that question.

7 MS. YELENICK: I think you misspoke,  
8 counsel.

9 THE WITNESS: Could you read that question  
10 back?

11 (Record read by the court reporter.)

12 A. I think something is fishy with that question.

13 Q. Well no, something was fishy with the previous  
14 testimony. The reality is, as I've asked you  
15 numerous times, to tell me at what point in time  
16 American Brands determined that there were additional  
17 American Tobacco Company documents in its files.  
18 Since you've been unable to do so, I can't really say  
19 at what point in time American Tobacco may have  
20 determined that there were additional American  
21 Tobacco Company documents in its files.

22 A. Your previous question did not even refer to  
23 American Brands.

24 Q. Sir, would you back -- would you let me finish?

25 A. Sure. But it didn't.

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- 1 Q. Would you let me finish?
- 2 A. Okay.
- 3 Q. So we have documents at Chadbourne & Parke, we
- 4 have documents at Brown & Williamson, and there are
- 5 still some documents in the files of American Brands
- 6 that are American Tobacco Company documents; correct?
- 7 A. What time period are you talking about now?
- 8 Q. The time when we served our document requests.
- 9 Would you like me to refresh your recollection as to
- 10 when that day was?
- 11 A. We've just looked at that day.
- 12 Q. And what was that day again?
- 13 A. I believe it was June 19th of 1995.
- 14 Q. How about if we answer the question as of that
- 15 date.
- 16 A. As of June 19th, 1995, American Tobacco Company
- 17 documents were at Brown & Williamson, were at
- 18 Chadbourne, and subsequent to that date we received
- 19 some additional American Tobacco documents from
- 20 American Brands.
- 21 Q. And it's my understanding that there were
- 22 approximately 20 million pages of American Tobacco
- 23 Company documents at Chadbourne & Parke at
- 24 approximately that time; correct?
- 25 A. I believe the total that we have currently is 20

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1 million pages.

2 Q. So the amount of documents that was actually at  
3 Chadbourne & Parke in June of 1995 when the document  
4 requests would have been served would be 20,000 minus  
5 whatever documents you received subsequent to that  
6 date from American Brands; correct?

7 A. It would be 20 million.

8 MS. YELENICK: Again you misspoke.

9 Q. The 20 million, whatever, documents you  
10 subsequently received from American Brands; correct?

11 A. I believe that is correct.

12 Q. Who reviewed the documents at Chadbourne & Parke  
13 to determine whether there were documents in that  
14 approximately 20 million pages which were responsive  
15 to the state of Minnesota's requests?

16 A. Attorneys.

17 Q. From which law firms?

18 A. Chadbourne & Parke.

19 Q. Chadbourne & Parke attorneys were the only  
20 attorneys to actually review those documents;  
21 correct?

22 A. The review of the documents, the 20 million  
23 pages of documents for production in the Minnesota  
24 case, was conducted at Chadbourne & Parke and only at  
25 Chadbourne & Parke.

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1 Q. I didn't ask you where it was done, sir. I  
2 asked you were Chadbourne & Parke attorneys the only  
3 attorneys that reviewed those documents for  
4 responsiveness and production in the Minnesota  
5 litigation.

6 A. I don't understand the distinction you're  
7 drawing.

8 Q. Well you told me where the documents were viewed  
9 at.

10 A. Uh-huh.

11 Q. I want to know who employed all of the people  
12 that reviewed them. Did Chadbourne & Parke in one  
13 fashion or another employ each and every person who  
14 reviewed the documents for production in the  
15 Minnesota litigation?

16 A. Yes.

17 Q. Attorneys from Leonard, Street & Deinard did not  
18 take part in that process; correct?

19 A. Attorneys from Leonard, Street & Deinard were  
20 involved in the production process in this case.

21 Q. But they did not review the documents; correct?

22 A. They did not review all the documents. Well I  
23 mean -- let's -- let's step back for a minute. When  
24 you say "reviewed" --

25 What do you mean by "review the documents?"

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- 1 Let's define --
- 2 Q. Look at them.
- 3 A. Did not look at them?
- 4 Q. Look at them at Chadbourne & Parke.
- 5 A. At Chadbourne & Parke.
- 6 Q. Right.
- 7 A. I believe the involvement of Leonard, Street &
- 8 Deinard attorneys at Chadbourne & Parke in the review
- 9 process was limited.
- 10 Q. Okay. Was it limited or was it non-existent?
- 11 A. I believe it was limited.
- 12 Q. Limited to what?
- 13 A. I recall Byron Starns participating in our
- 14 review efforts.
- 15 Q. Did Byron Starns actually physically review
- 16 American Tobacco Company documents in order to
- 17 determine whether they were responsive or not at
- 18 Chadbourne & Parke?
- 19 A. I don't know whether he -- he actually did that
- 20 or not. He was present and was familiar with the
- 21 process that we were using.
- 22 Q. But did he physically review the documents?
- 23 A. I don't know that he physically reviewed
- 24 documents for production.
- 25 Q. Did people who were deciding what documents

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1 would be produced actually have a copy of the  
2 requests for production of documents with them when  
3 they were doing their review?

4 A. On some occasions, yes; on some occasions, no.

5 Q. Was there a subsequent scope memo that was done  
6 to each and every person who was reviewing the  
7 documents to define what they should be looking for?  
8 And again, I'm not asking you for the content of this  
9 document, I'm simply asking you if the document  
10 exists.

11 MS. YELENICK: You can answer that  
12 question.

13 THE WITNESS: Could you repeat the  
14 question, please.

15 (Record read by the court reporter.)

16 A. The problem I have in answering that question is  
17 it assumes that there was a scope memo.

18 Q. Were there numerous scope memos?

19 A. The criteria for responsiveness in this case was  
20 not a static one. It was affected by subsequent  
21 requests, it was reflected -- affected by subsequent  
22 court orders, and it was affected by subsequent  
23 agreements with the plaintiff.

24 Q. And how was the scope of the search communicated  
25 to those people actually reviewing the documents?

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1 Was it done by handing them the actual document  
2 request or order, or was there some memorandum that  
3 was done by Chadbourne & Parke that interpreted that  
4 document request or order?

5 A. That question assumes that it was done the same  
6 way for every person, and it was not.

7 Q. Was a scope memo done for at least some of the  
8 reviewers?

9 A. It is my understanding that what you have  
10 defined as a scope memo -- well let me --

11 I'm not sure I can adopt your -- your -- your  
12 term here. Let me answer the question this way, and  
13 we can proceed from here. The obligations of the  
14 company to produce documents in the Minnesota case as  
15 dictated by the requests in the case, our responses  
16 to those requests, orders by the court, and  
17 applicable law, the culmination of that process and  
18 the requirements dictated by that process were  
19 communicated to those people who were making a  
20 determination as to whether a particular document was  
21 or was not responsive in this case.

22 Q. How was that done?

23 A. How was what done?

24 Q. That communication.

25 A. It was -- it was communicated in a variety of

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1 manners. One, it was communicated --

2 First of all, on a global sense it was  
3 communicated through the measures that were adequate  
4 and necessary to communicate that information. In  
5 terms of how specifically that was done, it was done  
6 orally, and it was done with the kind of document you  
7 seem to have respond -- referenced, which, as I  
8 mentioned, was not a static document.

9 Q. Okay. So there were scope statements and  
10 perhaps more than one scope statement.

11 A. I believe, as I've indicated, that to the extent  
12 there were subsequent requests, subsequent court  
13 orders, subsequent agreements with the plaintiffs,  
14 that the scope of responsiveness necessarily was  
15 modified.

16 Q. So Chadbourne & Parke attorneys and/or employees  
17 reviewed the approximately 20 million pages of  
18 documents at Chadbourne & Parke for responsiveness.

19 Who reviewed the documents from American Tobacco  
20 Company that had been sent to B&W?

21 A. Let me correct something in -- in the question  
22 you just asked me. The review was not entirely  
23 conducted on the premises of Chadbourne & Parke.

24 Q. Where else was it conducted?

25 A. It was conducted in part at the warehouse where

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1 the documents were maintained. We just physically  
2 could not hold all the pieces of paper.

3 Q. Okay. So you have a physical warehouse where  
4 you -- where you now retain all the documents, this  
5 20 million pages for the American Tobacco Company;  
6 correct?

7 A. Except -- except for the materials that are  
8 currently at Chadbourne being reviewed, yes.

9 Q. Where is that document depository located?

10 A. You're -- it's not a document --

11 The term "document depository" in this case has  
12 a special meaning. This is not a document  
13 depository.

14 Q. Document warehouse.

15 A. Well the warehouse. It -- it is located in New  
16 Jersey.

17 Q. Coming back to my original question: Who  
18 reviewed the documents that had been sent to The  
19 American Tobacco Company as part of that 1995 review  
20 process? I'm sorry, strike that.

21 Who reviewed the documents that had been sent to  
22 Brown & Williamson that were sent to Brown &  
23 Williamson as part of that 1995 review process?

24 A. As I believe I've testified, my understanding is  
25 that Brown & Williamson personnel reviewed The

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1 American Tobacco Company files for documents which  
2 were necessary for the ongoing operation of the  
3 business, and that those materials were either sent  
4 directly to Brown & Williamson or were retained at  
5 facilities that -- whose operations were ongoing.

6 Q. Yes, I understand that.

7 A. Okay.

8 Q. Now my question is: Who reviewed that group of  
9 documents to determine whether or not documents from  
10 that group should be produced in this litigation?

11 A. My -- my understanding is that the review of  
12 those materials was conducted by another firm.

13 Q. What firm is that?

14 THE WITNESS: Can I answer that?

15 MS. YELENICK: Yes.

16 A. King & Spalding.

17 Q. And have those documents been produced to the  
18 depository here in Minnesota?

19 A. What do you mean by "those documents?"

20 Q. The documents that were reviewed by King &  
21 Spalding from American Tobacco Company.

22 A. My understanding --

23 MS. YELENICK: Objection to form.

24 A. My understanding is that documents responsive to  
25 the requests in this case have been produced by King

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1 & Spalding.

2 Q. From The American Tobacco Company documents.

3 A. I'm getting a little confused here.

4 Q. It's not a confusing question.

5 A. Well I just -- I just want --

6 Q. I'm not asking about Brown & Williamson Company

7 documents, I'm asking about American Tobacco Company

8 documents.

9 A. Right. But obviously we have to talk about

10 what -- what portion of The American Tobacco Company

11 we're talking about. I believe you're focusing on

12 documents which were transferred to Brown &

13 Williamson.

14 Q. You know, if that isn't abundantly clear by now,

15 I don't know what possibly is.

16 A. Well I just -- I just want to make sure. I

17 don't want --

18 Q. Look. You defined --

19 A. This is a deposition that I'm under oath. I'm

20 being videotaped. I have to be completely accurate

21 in what I say.

22 Q. Look. I've defined it that way now. You've

23 defined it that way now. I don't know if there's

24 anybody in the room other than you who's in question

25 about what group of documents we're talking about.

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1 But lest there be any confusion at all, I'm talking  
2 about those American Tobacco Company documents that  
3 were transferred to Brown & Williamson following or  
4 as part of the review that was conducted in February  
5 of 1995. Are we clear about that?

6 A. Again when you say "transferred," I'm not  
7 trying --

8 Here, I just wanted to make sure I understand  
9 the question completely. I mean obviously all the  
10 documents were, quote, transferred to Brown &  
11 Williamson because they purchased the company. We  
12 are talking now about the documents that -- when the  
13 company people came through the facilities and  
14 retained the documents necessary for the ongoing  
15 operations of the business, those documents.

16 Q. Yes.

17 A. And -- okay. And your question is with regard  
18 to those documents what?

19 Q. My question is who reviewed them and produced  
20 them?

21 A. My understanding is that those documents were  
22 reviewed for responsiveness in this case by attorneys  
23 from King & Spalding.

24 Q. And did they produce those documents on behalf  
25 of The American Tobacco Company or did they produce

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1 those documents on behalf of Brown & Williamson?

2 MS. YELENICK: Objection to form.

3 MR. O'FALLON: What's your objection?

4 MS. YELENICK: Did they produce them?

5 MR. O'FALLON: Yes.

6 MS. YELENICK: The assumption is that they  
7 were produced.

8 MR. O'FALLON: Were none produced?

9 MS. YELENICK: The previous question was  
10 were --

11 MR. O'FALLON: If you want to state that,  
12 I'm more than happy to take that.

13 MS. YELENICK: The previous question was  
14 were they reviewed. If you'd like to change your  
15 question --

16 MR. O'FALLON: No, I really wouldn't.

17 MS. YELENICK: Well if you can answer the  
18 question.

19 THE WITNESS: Would you repeat the  
20 question, please.

21 (Record read by the court reporter.)

22 A. Just so we can move ahead here, you're asking me  
23 that when King & Spalding reviewed the documents that  
24 were transferred to Brown & Williamson which had been  
25 retained for the ongoing operation of the business as

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1 opposed to the stuff that we looked at, were those  
2 documents produced in this case.

3 Q. Well that's a good question. How about you  
4 answer that one.

5 A. Well is that the question you're asking? I'm  
6 trying to understand your question.

7 Q. Doesn't matter; you answer what question you  
8 want to anyhow. You stated the question. Answer  
9 your own question.

10 MS. YELENICK: Objection, counsel.

11 MR. O'FALLON: Why don't you read back his  
12 question so he can answer it.

13 (Record read by the court reporter.)

14 A. Do you want me to answer that question?

15 Q. Yes.

16 A. Again, I don't have first-hand knowledge about  
17 what King & Spalding did or did not do. My  
18 understanding is they reviewed those documents and,  
19 to the extent those documents were responsive to the  
20 requests in this case as modified by the -- the  
21 responses to those requests that Brown & Williamson  
22 may have placed, the court orders, agreements with  
23 plaintiff, they produced the responsive documents.

24 Q. Did they produce those documents on behalf of  
25 Brown & Williamson or did they produce those

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1 documents on behalf of American Tobacco Company?

2 MS. YELENICK: Again, objection to form.

3 A. My understanding is that to the extent that King  
4 & Spalding produced documents, they produced  
5 documents on behalf of Brown & Williamson.

6 Q. So they would have Brown & Williamson Bates  
7 stamp numbers on them.

8 MS. YELENICK: Objection to form.

9 A. I don't know what Brown & Williamson Bates stamp  
10 numbers are.

11 Q. Would they have American Tobacco Company Bates  
12 stamp numbers on those documents?

13 A. My understanding that documents produced by King  
14 & Spalding in this case would not bear the Bates  
15 number -- Bates numbers of the documents that -- that  
16 we produced for American Tobacco in this case.

17 Q. So they would bear a separate Bates number that  
18 would be consistent with whatever Bates numbering  
19 item Brown & Williamson was using.

20 A. I don't know how they Bates stamped their  
21 documents, if they did in fact --

22 Well I presume they numbered them some way. I  
23 just don't know how answer to that question.

24 Q. As part of the documents that I designated for  
25 this deposition, I've included in there American

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1 Tobacco Company documents produced by Brown &  
2 Williamson. Have you had a chance to look at those  
3 documents?

4 MS. YELENICK: Do you want to specify  
5 numbers, counsel, for the record?

6 MR. O'FALLON: No. I just want to ask the  
7 general question for now, ma'am.

8 A. I looked at the documents you designated.

9 Q. Okay. Do you believe those documents were  
10 produced by The American Tobacco Company or by Brown  
11 & Williamson?

12 A. I really --

13 MS. YELENICK: Objection, form.

14 A. I'd like to take a look at the documents you're  
15 talking about before I make any statements about  
16 those documents.

17 Q. You don't recall?

18 A. Frankly, I don't recall. It was a pretty large  
19 number of -- of materials you designated.

20 Q. I didn't designate a large number of materials  
21 that were American Tobacco Company documents  
22 containing American Tobacco Company letterhead that  
23 have been produced by Brown & Williamson; did I?

24 A. I don't want to argue what you did or didn't  
25 designate. If you'd like to show me a document that

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1 you designated, I'll be happy to take a look at it  
2 and answer your questions.

3 Q. Who do I need to talk about to determine how the  
4 review process that King & Spalding undertook  
5 occurred?

6 MS. YELENICK: Objection to form.

7 A. I -- I think you misstated something in that  
8 question.

9 Q. You do?

10 A. Yes.

11 Q. What do you think I misstated?

12 A. You said who do I need to talk about, and I  
13 don't know what that means.

14 Q. Oh. Who do I need to talk to to find out what  
15 King & Spalding did in order to produce American  
16 Tobacco Company documents in this litigation?

17 A. Well one -- one problem with the way you're  
18 phrasing this question is you're phrasing it as  
19 American Tobacco Company documents. What Brown &  
20 Williamson produced in this case are Brown &  
21 Williamson documents.

22 Q. Anything else you'd like to say about my  
23 question?

24 A. I'm just trying to make sure I answer.

25 Q. Do you understand it?

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1 THE WITNESS: Could you read the question  
2 back, please?

3 (Record read by the court reporter.)

4 A. I would imagine you'd need to talk to someone at  
5 King & Spalding.

6 Q. As you sit here today, you're not prepared to  
7 talk about that production process.

8 A. About King & Spalding's production process?

9 Q. Yes.

10 A. I don't -- I mean I -- I --

11 I don't know how to answer that question.

12 Q. How about a "yes" or "no?"

13 A. I'm prepared to talk about the subject matters  
14 subsumed within my deposition notice. I cannot  
15 comment on what another firm did.

16 Q. In August of 1994 when this case was originally  
17 sued out, the documents from American Tobacco  
18 Company's files that King & Spalding has or has not  
19 produced were not documents of Brown & Williamson;  
20 correct?

21 THE WITNESS: Could you repeat that  
22 question? I got a little lost.

23 (Record read by the court reporter.)

24 A. In August of 1994, the documents of the American  
25 Tobacco Company were the property of the American

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1 Tobacco Company.

2 Q. Let's go back for a minute and look at the Case  
3 Management Order that's been designated as  
4 Plaintiffs' Exhibit 1010. And again let's  
5 specifically look at Exhibit A and paragraph one of  
6 Exhibit A.

7 A. Okay.

8 Q. This document states that: "PRESERVATION:  
9 During the pendency of this litigation, and until a  
10 final order is entered by the Court closing this  
11 case, each of the parties herein and their respective  
12 officers, agents, servants, employees, and attorneys,  
13 and all persons in active concert or participation  
14 with them who receive active notice of this order by  
15 personal service or otherwise, are restrained and  
16 enjoined from altering, interlining, destroying,  
17 permitting the destruction of, or in any fashion  
18 changing any 'document' in the actual or constructive  
19 care, custody, or control of such person, wherever  
20 such document is physically located." Correct?

21 A. That's what it says.

22 Q. American Tobacco received a copy of this order;  
23 correct?

24 A. I believe so.

25 Q. American Tobacco destroyed documents in January

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1 and February of 1995; correct?

2 MS. YELENICK: Objection.

3 A. American Brands --

4 American Tobacco complied in full with the  
5 Castano order.

6 Q. Did American Tobacco destroy documents in  
7 January and February of 1995?

8 MS. YELENICK: Objection, misstates the --  
9 Misrepresents the court's order in the Castano  
10 case.

11 MR. O'FALLON: I didn't ask anything about  
12 the Castano order now; did I? I asked whether  
13 American Tobacco destroyed documents in January and  
14 February of 1995.

15 A. American Tobacco at no point destroyed any  
16 documents, the retention of which was required by  
17 this or any other order.

18 THE REPORTER: Can we go off the record a  
19 moment, please.

20 (Discussion off the record.)

21 (Deposition recessed at 5:24 o'clock p.m.)

22

23

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## 1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify  
3 that I am qualified as a verbatim shorthand reporter;  
4 that I took in stenographic shorthand the testimony  
5 of LAWRENCE E. SAVELL at the time and place  
6 aforesaid; and that the foregoing transcript  
7 consisting of pages 1 through 375 is a true and  
8 correct, full and complete transcription of said  
9 shorthand notes, to the best of my ability.

10 Dated at Minneapolis, Minnesota, this 14th  
11 day of April, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, LAWRENCE E. SAVELL, the deponent, hereby  
3 certify that I have read the foregoing transcript  
4 consisting of pages 1 through 375, and that said  
5 transcript is a true and correct, full and complete  
6 transcription of my deposition except:

7

8

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14

15 LAWRENCE E. SAVELL

16 Deponent

17

18 Sworn and subscribed to before me this day  
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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